Lim Jen Hsian & Anor v Ketua Pengarah Jabatan Pendaftaran Negara & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(A) 391–12 OF 2015
DAVID WONG, BADARIAH SAHAMID AND HAMINDAR SINGH JJCA
16 MARCH 2017

Administrative Law — Judicial review — Application for — Judicial review against decision of Secretary General of National Registration Department — Secretary General dismissed applicant's application to be registered as citizen of Malaysia — Whether applicant citizen of Malaysia by operation of law — Requirement of citizenship by jus soli and jus sanguinis — Principles of jus soli and jus sanguinis — Whether applicable to applicant — Federal Constitution art 15A

This was an appeal against the decision of the High Court which dismissed the appellants' application for judicial review. The second appellant was born on 6 October 2010 in Kuala Lumpur, Malaysia. The second appellant's biological mother ('Rai Putta') was a citizen of Thailand. The first appellant claimed to be the biological father of the second appellant. The first appellant and Rai Putta were never married and/or had not registered their marriage at the first respondent's office. The first appellant claimed that the first appellant and Rai Putta were separated in April 2011 when Rai Putta returned to Thailand for good. Since then, the second appellant had been under the care of the first appellant's mother. On 9 April 2011, the first appellant had, for the first time, applied for the second appellant's citizenship under art 15A of the Federal Constitution ('the FC'). The application was dismissed by the Secretary General on 11 October 2014. The first appellant obtained leave to apply for judicial review against the Secretary General's decision. However, the judicial review application was dismissed by the High Court.

Held, dismissing the appeal:

(1) The second appellant had to satisfy both the requirements of *jus soli* and *jus sanguinis* in order to fulfil the requirements of art 14(1)(b) and s 1(e) of Part II, Second Schedule of the FC. The second appellant was born after Merdeka Day in the Federation in Kuala Lumpur, Malaysia, thus, fulfilling the requirement of *jus soli* in art 14(1)(b) of the FC. The second appellant's lineage would only be traceable to his Malaysian biological

father provided that his parents were in a lawful marriage. However, he did not acquire citizenship from his Malaysian biological father. He acquired the citizenship of his biological mother who was a Thai national. Therefore, it could not be said that he was one 'who is not born a citizen of any country' pursuant to s 1(e) of Part II, Second Schedule of the FC (see paras 28, 31, 38 & 40).

(2) In the case of an illegitimate child, the word 'parent' is construed to refer to his biological mother. The appellants failed to prove a prima facie case that the second appellant was 'not born a citizen of any country' and therefore, the burden of proof had not shifted to the respondents. Thus, the issue of whether expert opinion is required by the respondents to prove that the second appellant had acquired Thai citizenship at birth did not arise. The second appellant had thus failed to satisfy the requirements stipulated in s 1(e) of Part II, Second Schedule of the FC, to obtain citizenship by operation of law (see paras 35 & 41–42).

[Bahasa Malaysia summary

Ini adalah rayuan terhadap keputusan Mahkamah Tinggi yang menolak permohonan perayu bagi semakan kehakiman. Perayu kedua dilahirkan pada 6 Oktober 2010 di Kuala Lumpur, Malaysia. Ibu kandung perayu kedua ('Rai Putta') adalah warganegara Thailand. Perayu pertama mendakwa bahawa dia bapa kandung perayu kedua. Perayu pertama dan Rai Putta tidak pernah berkahwin dan/atau tidak mendaftarkan perkahwinan mereka di pejabat responden pertama. Perayu pertama mendakwa bahawa perayu pertama dan Rai Putta berpisah pada bulan April 2011 apabila Rai Putta kembali ke Thailand buat selamanya. Sejak itu, perayu kedua dijaga oleh ibu perayu pertama. Pada 9 April 2011, perayu pertama telah, buat kali pertamanya, memohon kewarganegaraan perayu kedua di bawah perkara 15A Perlembagaan Persekutuan ('PP'). Permohonan ini ditolak oleh Ketua Setiausaha pada 11 Oktober 2014. Perayu pertama memperoleh kebenaran memohon semakan kehakiman terhadap keputusan Ketua Setiausaha. Walaubagaimanapun, permohonan semakan kehakiman ditolak oleh Mahkamah Tinggi.

Diputuskan, menolak rayuan:

(1) Perayu kedua perlu memenuhi kedua-dua keperluan *jus soli* dan *jus sanguinis* untuk memenuhi keperluan perkara 14(1)(b) dan s 1(e) Bahagian II, Jadual Kedua PP. Perayu kedua dilahirkan selepas Hari Kemerdekaan di Wilayah Persekutuan Kuala Lumpur, Malaysia dan dengan itu, memenuhi keperluan *jus soli* dalam perkara 14(1)(b) PP. Keturunan perayu kedua hanya dapat dikesan melalui ayah kandungnya yang merupakan warganegara Malaysia jika ibu bapanya

berkahwin secara sah. Walau bagaimanapun, dia tidak memperoleh kewarganegaraan dari bapa kandungnya yang berwarganegara Malaysia. Dia memperoleh kewarganegaraan ibu kandungnya yang merupakan warganegara Thailand. Oleh itu, tidak boleh dikatakan bahawa dia seorang 'yang tidak dilahirkan sebagai warganegara mana-mana negara' menurut s 1(e) Bahagian II, Jadual Kedua PP (lihat perenggan 28, 31, 38 & 40).

(2) Dalam hal anak tidak sah taraf, perkataan 'ibubapa' ditafsirkan sebagai merujuk pada ibu kandungnya. Perayu gagal membuktikan kes prima facie bahawa perayu kedua 'tidak dilahirkan sebagai warganegara dari mana-mana negara' dan dengan itu, beban pembuktian tidak berpindah pada responden. Oleh itu, isu sama ada pendapat pakar diperlukan oleh responden untuk membuktikan bahawa perayu kedua telah memperoleh kewarganegaraan Thai semasa kelahirannya tidak timbul. Perayu kedua gagal memenuhi syarat yang ditetapkan dalam s 1(e) Bahagian II, Jadual Kedua PP, untuk memperoleh kewarganegaraan melalui operasi undang-undang (lihat perenggan 35 & 41–42).]

Notes

For cases on application for judicial review, see 1(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 329–407.

Cases referred to

Chin Kooi Nah (suing on behalf of himself and as litigation representative to Chin Jia Nee, child) v Pendaftar Besar Kelahiran dan Kematian, Malaysia [2016] 7 MLJ 717, HC (refd)

Foo Toon Aik (suing on his own behalf and as representative of Foo Shi Wen, Child) v Ketua Pendaftar Kelahiran dan Kematian, Malaysia [2012] 9 MLJ 573, HC (refd)

Kuluwante (an infant) v Government of Malaysia & Anor [1978] 1 MLJ 92 (consd)

Mak Sik Kwong v Minister of Home Affairs, Malaysia [1975] 2 MLJ 168 (consd)

Ong Boon Hua @ Chin Peng & Anor v Menteri Hal Ehwal Dalam Negeri, Malaysia [2008] 3 MLJ 625; [2008] 5 CLJ 42, CA (refd)

Singh v Commonwealth of Australia [2004] HCA 43, HC (refd)

Toh Whye Teck v The Happy World Ltd [1953] 1 MLJ 171 (refd)

Legislation referred to

Evidence Act 1950 s 103

Federal Constitution arts 14, 14(1)(b), 15(A), 17, Second Schedule, Part II, s 1(e), Part III, ss 2, 4

A Nationality Act BE 2508 [TH] Cap 1, s 7

Appeal from: Application for Judicial Review No 25–87–04 of 2014 (High Court, Kuala Lumpur)

B **Badariah Sahamid JCA:**

INTRODUCTION

[1] This is an appeal against the decision of the High Court in Kuala C Lumpur dated 23 April 2015, which dismissed the appellants' application for judicial review. Leave to apply for judicial review was allowed on 14 July 2014 limited to the following prayers:

(a) a declaration that the second appellant is a citizen of Malaysia by operation of law under s 1(e) of the Second Schedule, Part II, and D art 14(1)(b) of the Federal Constitution; and

(b) order of mandamus to be issued to the first respondent to issue MyKid or certificate of citizenship to recognise the second appellant as a Malaysian citizen by operation of law under art 14(1)(b) of the Federal E Constitution.

BACKGROUND FACTS

[2] The salient facts of this case may be summarised from the learned High F Court judge's grounds of judgment. The second appellant was born on 6 October 2010 in Hospital Tung Shin, Kuala Lumpur, Malaysia. The second appellant's biological mother named Rai-Putta,Thippawan ('Rai Putta') is a citizen of Thailand (exh A of encl 10).

G **[3]** The first appellant claims to be the biological father of the second appellant.

[4] The first appellant and Rai Putta were never married and/or had not registered their marriage at the first respondent's office. H

[5] The first appellant claimed that the first appellant and Rai Putta were separated in April 2011 when Rai Putta returned to Thailand for good. Since then the second appellant had been under the care of the first appellant's I mother.

[6] On 9 April 2011, the first appellant had for the first time applied for the

second appellant's citizenship under art 15(A) of the Federal Constitution. The application was dismissed by the Secretary General on 11 October 2014.

[7] The first appellant then filed encl 1 and leave was granted limited to prayer (iii) of encl 1.

THE ISSUES BEFORE THE HIGH COURT

[8] The issues raised for determination before the High Court are as follows:

(a) whether the appellants have fulfilled the requirements to obtain citizenship by operation of law as stipulated by art 14(1) of the Federal Constitution? and

(b) whether the issue in this judicial review application is non-justiciable under Part III, Second Schedule of the Federal Constitution?

FINDINGS AND DECISION OF THE HIGH COURT

[9] On the issue of justiciability, the learned High Court judge had made the following findings:

> The matter surrounding this JR (judicial review) application concerned a decision made pursuant to Part III of the Federal Constitution ('the FC') (art 14 of the FC) which matter is non-justiciable as provided under s 2, Part III of the Second Schedule of the FC. The provision clearly ousts the jurisdiction of the court to decide on issues relating to the decision on the citizenship of the second applicants. This provision is applicable to application of citizenship under art 14(1)(b) of the FC.
>
> ... In the case of *Kuluwante (an infant) v Government of Malaysia & Anor* [1978] 1 MLJ 92, p 95. His Lordship, Justice Yusoff in dealing with the case concerning application of citizenship by way of registration under art 15 of the FC had aptly made observation on the effect of s 4 of Part III of the Second Schedule that it excludes the jurisdiction of the court to entertain a claim for declaration of citizenship under Part III of the Federal Constitution.

[10] In addition, the learned High Court judge found that the appellants had failed to satisfy the requirements of s 1(e) of Part II of the Second Schedule of the Federal Constitution to obtain citizenship by operation of law for the following reasons:

> This is due to the fact that the biological father and mother of the second applicant could be ascertained and these facts were not even disputed by the first applicant. Exhibit A to encl 10 clearly provided that the second applicant's biological father is a

citizen and his biological mother Rai-Putta is a citizen of Thailand. Both this couple had not been married at the time the second applicant was born. The birth certificate of the second applicant was endorsed with 'application under s 13 of the Registration of Birth and Death Act 1957'.

Clearly the citizenship of the second applicant is determinable as the second applicant's father is a Malaysian and the mother is of Thai origin and by virtue of para 1(b) of Part II of the Second Schedule, the citizenship of the applicant is determinable which a Thailand national is.

[11] The learned High Court judge referred to Cap 1, s 7 of the Nationality Act BE 2508 of Thailand, reproduced below:

Chapter 1

Acquisition of Thai Nationality

Section 7 The following persons acquire Thai nationality by birth:

(1) A person born of a father or a mother of Thai nationality, whether within or outside the Thai Kingdom;

(2) A person born within the Thai Kingdom except the person under section 7 paragraph one.

'Father' in (1) means also a person having been proved, in conformity with the Ministerial Regulation, that he is a biological father of the person even though he did not register marriage with the mother of the person or did not do a registration of legitimate child.

[12] The learned High Court judge made a finding that there is no dispute that the second appellant was born within the Federation. However, the appellants have failed to fulfil the other requirement stipulated in s 1(e) of Part II of the Second Schedule of the Federal Constitution.

[13] The learned High Court judge concluded as follows:

Therefore, the contention of the applicants that the second applicant is a stateless person pursuant to s 14(1)(e) of Part II, of the Second Schedule of the FC could not hold water because from the facts that were disclosed to this court as discussed above and by reason that the second applicant's biological mother being a Thai national and based on the Nationality Act BE 2508. Despite the second applicant being an illegitimate child, he has a right to be conferred a Thai citizenship and not a Malaysian citizenship even though he was born in Malaysia.

GROUNDS OF APPEAL

[14] The grounds of appeal may be summarised as follows:

(a) the learned High Court judge had erred in her finding that the appellants had failed to fulfil the conditions and requirement to acquire citizenship by operation of law under s 1(e) of the Second Schedule, Part II, and art 14(1)(b) of the Federal Constitution;

(b) the learned High Court judge had erred in taking into account the laws of Thailand which is not relevant to the issues in the instant case;

(c) the learned High Court judge had erred in taking into account the illegitimacy of the second appellant in her interpretation of s 1(e) of the Second Schedule, Part II, and art 14(1)(b) of the Federal Constitution;

(d) the learned High Court judge had erred in her failure to appreciate that there are national and international provisions for the avoidance of statelessness; and

(e) this is a non-justiciable matter on which the court has no jurisdiction. Pursuant to Part III, Second Schedule of the Federal Constitution, the Federal Government has the sole discretion and power to grant Malaysian citizenship to persons applying under art 14 of the Federal Constitution.

OUR JUDGMENT

[15] After considering the oral and written submissions of parties, the appeal records as well as relevant authorities, we find no merits in this appeal and consequently, we dismiss this appeal and affirm the decision of the High Court. Our reasons are set out below.

Issue of justiciability

[16] One of the issues raised before the High Court and in the memorandum of appeal, is whether the issue in this judicial review application is non-justiciable under s 2 of Part III, Second Schedule of the Federal Constitution?

[17] Section 1 of Part III of the Second Schedule states as follows:

> The functions of the Federal Government under Part III of this Constitution shall be exercised by such Minister of that Government as the Yang di-Pertuan Agong may from time to time direct, and references in this Schedule to the Minister shall be construed accordingly.

[18] Section 2 of Part III of the Second Schedule states as follows:

A A decision of the Federal Government under Part III of this Constitution shall not be subject to appeal or review in any court.

[19] After a consideration of the authorities, we are of the opinion that the learned High Court judge had erred in ruling that s 2 of Part III of the Second B Schedule to the Federal Constitution precludes the jurisdiction of the court.

[20] Firstly, the learned High Court judge had misread *Kuluwante*'s case. In *Kuluwante*'s case, Justice Yusoff had specifically addressed the issue of 'whether the court is precluded from exercising its original jurisdiction in granting this C declaration by reason of the *ouster provision* in the Second Schedule of the Federal Constitution'.

His Lordship had stated thus at p 93:

D The effect of s 2 of Part III of the Second Schedule of the Federal Constitution (ouster provision) which purports to preclude the jurisdiction the court has been decided in a series of cases in our courts beginning with *Soon Kok Leong v Minister of Interior, Malaysia* [1968] 2 MLJ 88 and recently in the decision of the court in *Mak Sik Kwong v Minister of Home Affairs, Malaysia* [1975] 2 MLJ 168 and in the latter case, relevant authorities have been quite exhaustively dealt with. In those E cases the courts have held that this ouster provision does not preclude the courts from entertaining an application for an order of certiorari to quash the decision of a statutory tribunal where there was an error of law apparent on the face of the record.

F **[21]** After a review of relevant authorities, Justice Yusoff had stated thus at p 95:

For these reasons, I am of the view that in a proper case, the court is not precluded by reason of the 'ouster provision' only, to entertain a claim for declaration that an individual is a citizen. But whether the court would entertain a claim for declaration G that the plaintiff is eligible for registration as a citizen' under a relevant provision of the Federal Constitution as it is sought in this case, involves different considerations and the court should also construe other provisions of the law relating to citizenship to determine the effect of such declaration.

H **[22]** In *Kuluwante*'s case, the finding of Justice Yusoff that the court has no jurisdiction to intervene was in respect of s 4 of Part III of the Second Schedule, not the abovementioned s 2. In addition, the finding was premised on the failure of the applicant to seek prior recourse to the Minister.

I ... The effect of s 4 of Part III of the Second Schedule, in my opinion, excludes the jurisdiction of the court to entertain a claim for declaration of an individual's eligibility for registration as citizen under the Federal Constitution before recourse

is had to the Minister who exercises the function of the Federal Government. Such a declaration is, in my view, hypothetical in nature and cannot be entertained by the court ... It would be premature for the court to intervene before the Minister had made his final decision.

[23] In *Kuluwante*'s case, Justice Yusoff had referred to the case of *Mak Sik Kwong v Minister of Home Affairs, Malaysia* [1975] 2 MLJ 168, where Abdoolcader J was faced, inter alia, with the same issue of whether the ouster clause in s 2 of Part III of the Second Schedule to the Constitution precludes the applicant from coming to court to seek an order of certiorari.

[24] Justice Abdoolcader held that the ouster provision in the schedule to the Federal Constitution did not preclude the court from entertaining the application for an order of certiorari. Whether grounds for an order can be established and whether the application for certiorari will succeed are matters to be decided in the substantive motion itself.

At p 170–171:

I do not think there can be any doubt now that it is settled law that a finality or privative clause does not restrict in any way whatsoever the power of the courts to issue certiorari to quash for jurisdictional defect, error of law on the face of the record or manifest fraud. The same process of reasoning has even permitted the courts to interpret ouster clauses expressly referring to prohibition and certiorari and taking away the right to apply for such remedies as still permitting the grant of those remedies for lack of jurisdiction or the fraud must be manifest.

... It is clear that the *raison de tre* for the inroads into privative and ouster clauses is that the courts constitute the channel through which the King's justice is dispensed to his people and are accordingly the bastion of the rights of the individual. The courts must therefore necessarily be the ultimate bulwark against the excesses of the executive.

[25] Thus, on a careful consideration of the authorities abovementioned, we are of the view that s 2 of Part III of the Second Scheduleto the Constitution does not absolutely preclude the jurisdiction of the court.

Section 1(e) of Part II, Second Schedule of the Federal Constitution

[26] The second issue before us is whether the second appellant has satisfied the requirements stipulated in para 1(e) of Part II, Second Schedule of the Federal Constitution, to be read with art 14(1)(b)of the Federal Constitution to obtain citizenship by operation of law?

[27] Article 14(1)(b) of the Federal Constitution encapsulates the requirement of citizenship by *jus soli* ie by the place of birth; while para 1(e) of Part II, Second Schedule of the Federal Constitution (not born a citizen of any

country) encapsulates the requirement of citizenship by *jus sanguinis* ie by blood or lineage.

[28] Thus, it would appear that the second appellant would need to satisfy both the requirements of *jus soli* and *jus sanguinis* in order to fulfil the requirements of art 14(1)(b) and s 1(e) of Part II, Second Schedule of the Federal Constitution (refer to *Chin Kooi Nah (suing on behalf of himself and as litigation representative to Chin Jia Nee, child) v Pendaftar Besar Kelahiran dan Kematian, Malaysia* [2016] 7 MLJ 717).

[29] The doctrines of *jus soli* and *jus sanguinis* were explained in the case of *Singh v Commonwealth of Australia* [2004] HCA 43, which was referred to in the case of *Chin Kooi Nah (suing on behalf of himself and as litigation representative to Chin Jia Nee, child) v Pendaftar Besar Kelahiran dan Kematian, Malaysia* [2016] 7 MLJ 717, at p 747 as follows:

> By the late nineteenth century, international law recognised two well established rules for acquiring nationality by birth: *jus soli* and *jus sanguinis* (the Australian Legal Dictionary (1997) defines *jus soli* to mean: a right acquired by virtue of the soil or place of birth. Under this right, the nationality of a person is determined by the place of birth rather than parentage. Nationality is conferred by the state in which the birth takes place; and defines *jus sanguinis* to mean: a right of blood. A right acquired by virtue of lineage. Under this right, the nationality of a person is determined by the nationality of their parents, irrespective of the place of birth.

[30] The relevant provisions in the Federal Constitution abovementioned are reproduced below:

> Article 14 Citizenship by Operation of Law
>
> (1) Subject to the provisions of this Part, the following persons are citizens by operation of law, that is to say:
>
> (a) ...
>
> (b) every person born on or after Malaysia Day, and having any of the qualifications specified in Part II of the Second Schedule.

[31] There is no dispute that documentary evidence confirms that the second appellant was born after Merdeka Day in the Federation ie on 6 October 2010 in Hospital Tung Shin, Kuala Lumpur, Malaysia thus fulfilling the requirement of *jus soli* in art 14(1)(b) of the Federal Constitution.

[32] The above provision is to be read with para 1(e) of Part II of the Second Schedule of the Federal Constitution as follows:

> Citizenship by operation of law of persons born on or after malaysia day:

(1) Subject to the provisions of Part III of this Constitution, the following persons born on or after Merdeka Day are citizens by operation of law, that is to say:

(a) ...

(b) ...

(c) ...

(d) ...

(e) every person born within the Federation *who is not born a citizen of any country* otherwise than by virtue of this paragraph. (Emphasis added.)

[33] It is a well established principle of law that he who asserts must prove. This is particularly so in respect of facts which are within the appellants' knowledge. The burden of proof is on the appellants to establish on the balance of probabilities that the second appellant *was not born* a *citizen of any country.* Such rule of evidence is enunciated in s 103 of the Evidence Act 1950 which provides:

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that proof of that fact shall lie on any particular person.

[34] In the case of *Ong Boon Hua @ Chin Peng & Anor v Menteri Hal Ehwal Dalam Negeri, Malaysia* [2008] 3 MLJ 625; [2008] 5 CLJ 42, it was held that the burden is on the applicant to prove his citizenship status by the relevant documents, the absence of which would be fatal to prove his claim.

[35] The burden of proof would only shift to the respondent to prove positively that the second appellant was born a citizen of a foreign country once the appellant has established a prima facie case (refer to *Toh Whye Teck v The Happy World Ltd* [1953] 1 MLJ 171).

[36] Paragraph 1(e) of Part II, Second Schedule of the Federal Constitution confers citizenship to a person born by *jus sanguinis*, by reference to his blood or lineage. Thus when a child has not, at birth, acquired citizenship of any country, this would render him/her *not born a citizen of any country*.

[37] In the instant case, although the second appellant was born in the Federation, he does not acquire citizenship from his Malaysian biological father as being illegitimate, he acquires the citizenship of his biological mother who is a Thai national. The second appellant's biological mother named Rai-Putta Thippawan ('Rai Putta') is a citizen of Thailand (exh A of encl 10)

(refer to *Foo Toon Aik (suing on his own behalf and as representative of Foo Shi Wen, Child) v Ketua Pendaftar Kelahiran dan Kematian, Malaysia* [2012] 9 MLJ 573).

[38] The second appellant's lineage would only be traceable to his Malaysian biological father provided that his parents was in a lawful marriage. In the case of an illegitimate child, the word 'parent' is construed to refer to his biological mother.

Section 17 of Part III of the Federal Constitution states as follows:

> For the purposes of Part III of this Constitution references to a person's father or to his parent, or to one of his parents, are in relation to a person who is illegitimate to be construed as references to his mother, and accordingly section 19 of this Schedule shall not apply to such person.

[39] In the instant case the identity and citizenship status of the second appellant's biological parents are known. There is no dispute that the second appellant's biological father is the first appellant and his biological mother, Rai-Putta is a Thai National. There is also no dispute that at the time of his birth, the second appellant's biological parents were not legally married.

[40] While the second appellant's biological father is a Malaysian citizen, because of the second appellant's illegitimate status, the second appellant does not acquire the citizenship of his biological father. Instead, he acquires the citizenship of his biological mother who, it is not disputed, is a Thai national. Thus, he cannot be said to be one, *who is not born a citizen of any country* pursuant to para 1(e) of Part II, Second Schedule of the Federal Constitution.

[41] Thus, on the available evidence the appellants have failed to prove a prima facie case that the second appellant was *not born a citizen of any country*. In the circumstances, we are of the opinion that the burden of proof has not shifted to the respondents to prove that the second appellant was conversely, born a citizen of another country (ie Thailand). Thus, the issue of whether expert opinion is required by the respondent to prove that the second appellant had acquired Thai citizenship at birth does not arise.

[42] In conclusion, we are of the considered opinion that the second appellant has failed to satisfy the requirements stipulated in para 1(e) of Part II, Second Schedule of the Federal Constitution, to obtain citizenship by operation of law.

[43] Accordingly, we dismiss this appeal and affirm the decision of the learned High Court judge. We make no order as to costs.

Appeal dismissed with no costs.

Reported by Afiq Mohamad Noor