

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR  
DALAM WILAYAH PERSEKUTUAN KUALA LUMPUR  
(BAHAGIAN SIVIL)  
GUAMAN NO. 23NCVC-28-04/2015

ANTARA

1. DATO' SRI MOHD NAJIB BIN TUN HAJI  
ABDUL RAZAK  
(NO. K/P: 530723-06-5165)
  2. DATIN PADUKA SERI ROSMAH MANSOR  
(NO. K/P: 511210-05-5558)
- PLAINTIF-  
PLAINTIF

DAN

1. MOHD RAFIZI RAMLI
  2. CHAN CHEE KONG  
(NO. K/P: 630326-08-5291)  
(BERNIAGA DI BAWAH NAMA  
DAN GAYA "MR MULTIMEDIA")  
(NO. SYARIKAT: 001875478)
- DEFENDAN-  
DEFENDAN

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**THE 1<sup>ST</sup> DEFENDANT'S  
AMENDED DEFENCE AND COUNTERCLAIM**

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**DEFENCE**

PARTIES

1. Save that the 1<sup>st</sup> Plaintiff is the Prime Minister of Malaysia and the President of United Malaya Union Organisation ("UMNO"), with an address

for service as stated, paragraph 1 of the Statement of Claim is denied. At all material times, the 1<sup>st</sup> Plaintiff is also the Finance Minister of Malaysia.

2. The 1<sup>st</sup> Plaintiff, being the Prime Minister appointed by the Yang di-Pertuan Agong under the Federal Constitution of Malaysia, is the Head of the Cabinet which exercises the executive authority of the Federation of Malaysia in accordance with the Federal Constitution of Malaysia.
3. As the Prime Minister and Finance Minister of Malaysia, the 1<sup>st</sup> Plaintiff was and is responsible for all policies and the implementation thereof, which affect the economy and commerce of the nation.
4. In the circumstances, the actions, initiatives and policies of the government of Malaysia, helmed by the Cabinet and the 1<sup>st</sup> Plaintiff, are matters of utmost public interest.
5. Paragraphs 2 of the Statement of Claim is admitted. Further, the 2<sup>nd</sup> Plaintiff, as the wife of the 1<sup>st</sup> Plaintiff, is herself a public figure.

#### Particulars

- a. The 2<sup>nd</sup> Plaintiff is the wife of the Prime Minister of Malaysia.
- b. The 2<sup>nd</sup> Plaintiff has held herself out or has been held out as the First Lady of Malaysia.
- c. The role of the First Lady of Malaysia has been presented as a component of the Prime Minister's department, replete with staffing, an office and an official website.

- d. The 2<sup>nd</sup> Plaintiff has involved herself in various public or public interest initiatives, which have received and continue to receive wide coverage in the media.
  - e. Many of her public or public interest initiatives have received funding or support from the government of Malaysia or public officials in Malaysia.
  - f. The 2<sup>nd</sup> Plaintiff attends many government or government-related functions both nationally and internationally.
  - g. The conduct of the 2<sup>nd</sup> Plaintiff has been the subject of rampant press and public comment.
6. By reason of the matters pleaded above, the 1<sup>st</sup> Plaintiff is not suing in his personal capacity as pleaded in the Statement of Claim but is suing in his position as the Prime Minister and Finance Minister of Malaysia as the subject matter of the speech and the words complained of in the Statement of Claim relate directly to his performance and execution of his public duties in the aforesaid positions. Further, the 2<sup>nd</sup> Plaintiff, by reason of the matters pleaded above also sues in her public position as described above.
7. In the circumstances, the 1<sup>st</sup> Defendant will contend that the 1<sup>st</sup> and/or 2<sup>nd</sup> Plaintiffs are not entitled to bring this suit. Further, the words complained of, even if defamatory, which is denied, are covered by absolute privilege.
8. Further, with particular respect to the words complained of in paragraph 7 of the Statement of Claim ("**the Words Complained Of**"), the 2<sup>nd</sup> Plaintiff has, by her own conduct and that of her associates, garnered much media

attention in recent years with her spending sprees and purchases/gifts of luxury handbags and very expensive jewellery:

- a. Sometime in late 2012, one Deepak Jaikishan A/L Jaikishan Rewachand claimed that he had spent approximately RM13 million in 3 months on expensive jewellery for the 2<sup>nd</sup> Plaintiff.
  - b. Prior to that, sometime in mid-2011, the 2<sup>nd</sup> Plaintiff was in the limelight when some screenshots from Sistem Maklumat Kastam (JKED) were circulated, showing details of a blue diamond ring purportedly purchased by the 2<sup>nd</sup> Plaintiff from the New York based jeweller Jacob & Co for more than RM24 million.
  - c. To date there are still regular public discussions about the 2<sup>nd</sup> Plaintiff's expensive jewellery, handbags and lifestyle.
  - d. It is the general public perception that the 2<sup>nd</sup> Plaintiff, as well as the 1<sup>st</sup> Plaintiff, leads a luxurious lifestyle which is hard to justify by their family income and is unbecoming of their positions pleaded above.
9. In this respect, the 1<sup>st</sup> Plaintiff as Prime Minister and the 2<sup>nd</sup> Plaintiff as wife of the Prime Minister are expected to maintain dignity, reserve and comportment deserving of their respective public stations.

10. Paragraph 3 of the Statement of Claim is admitted. Further, as an elected member of Parliament, and the vice president of Parti Keadilan Rakyat (“PKR”), a political party which was and is at all material times part of the opposition coalition, the 1<sup>st</sup> Defendant’s duties and responsibilities include:
- (a) holding the Government accountable for its decisions, actions and policies;
  - (b) influencing Federal Government policies;
  - (c) promoting Governmental accountability and transparency;
  - (d) scrutinizing the workings of the Government;
  - (e) attending to public issues, including those in relation to commerce and economics and in particular, the ever-escalating cost of living of ordinary Malaysians; and
  - (f) raising awareness and providing information to the public where matters of public interest are involved.

#### THE SPEECH

11. Paragraph 5 of the Statement of Claim is admitted. The 1<sup>st</sup> Defendant was invited to give a talk (“*ceramah*”) by the Bandar Tun Razak branch of Parti Keadilan Rakyat.

12. Save that the 1<sup>st</sup> Defendant delivered a speech on the importance of maintaining oil subsidies to ensure a reduced cost of living for the people at the ceramah on 22.11.2014 (“**the Speech**”), the 1<sup>st</sup> Defendant has no knowledge of the party responsible for the uploading and/or dissemination of the same alleged paragraph 6 of the Statement of Claim.
13. Except that sub-paragraphs 7.1, 7.2 and 7.3 of the Statement of Claim contain excerpts of the Speech, paragraph 7 of the Statement of Claim is denied.
14. The transcript in Annexure A of the Statement of Claim is incomplete and inaccurate. A complete and accurate transcript of the Speech is annexed as “Annexure B”.

#### GOVERNMENT SPENDING AND MISMANAGEMENT OF FUNDS

15. The 1<sup>st</sup> Defendant contends that the Speech was one of a series of press releases and public discourse in relation to the withdrawal of fuel subsidies:
  - 15.1 As a matter of policy and for a prolonged period, the Government has allocated funds to subsidise the use of petrol by the general public (“**the Fuel Subsidy**”).
  - 15.2 The Fuel Subsidy was, inter alia, used to stabilize the petrol prices within Malaysia, and as a measure to control inflation.

- 15.3 Within the first year of the 1<sup>st</sup> Plaintiff's entry into office as the Prime Minister of Malaysia, the Fuel Subsidy was reduced, and was subsequently removed altogether sometime at the end of 2014.
- 15.4 The reduction and subsequent removal of the Fuel Subsidy were purportedly for purposes of reducing the large deficit the nation experienced and to allocate the saving to other National Key Results Area and National Key Economic Area.
- 15.5 However, the Auditor General's reports and other sources have continued to disclose the government's excessive spending, wastage and mismanagement. Consequently, any purported savings by the reduction and/or removal of the Fuel Subsidy would have a negligible impact in reducing the government deficit.

#### MEANING OF THE SPEECH

16. As the Prime Minister and Finance Minister of Malaysia, the 1<sup>st</sup> Plaintiff is responsible inter alia for ensuring a proper allocation of the fuel subsidies, and is accountable for all funds collected by the federal government including any hidden taxes.
17. The substance and focus of the Speech was:

- 17.1 The 1<sup>st</sup> Plaintiff's and the federal government's refusal to reduce the country's fuel prices despite falling global fuel prices since July 2014;
- 17.2 Increased/high fuel prices will lead to a higher cost of living for the general public and eventually inflation;
- 17.3 The Fuel Subsidy is important to ensure that Malaysian citizens benefit from fuel export revenue;
- 17.4 The lack of transparency in the handling of savings and income resulted from the falling global oil prices and the removal of the Fuel Subsidy.
18. Between 15.9.2014 and 28.2.2015, the 1<sup>st</sup> Defendant made approximately 15 press releases on the Fuel Subsidy Issue and the excessive hidden tax collected by the federal government, as the Member of Parliament for Pandan. At the material time, these issues were intensely debated in the public domain and on social media in the light of the falling global fuel prices.
19. The 1<sup>st</sup> Defendant has no knowledge of paragraph 9 of the Statement of Claim.
20. Save that the Speech made references to the 1<sup>st</sup> Plaintiff in his official capacity as Prime Minister of Malaysia, paragraphs 10, 11, 12, 16, 17, 18, 19 and 20 of the Statement of Claim are denied.



21. Further, the 1<sup>st</sup> Defendant denies that the Speech or the Words Complained Of bore or were understood to bear or were capable of bearing or being understood to bear any meaning set out in paragraphs 17 and 18 of the Statement of Claim or any meaning defamatory of the Plaintiffs.

22. Further, in context of the matters pleaded above, the Words Complained Of were not intended as statements of fact but were statements made in jest. The Speech and / or the Words Complained Of were delivered in a lighthearted, exaggerated and rhetorical fashion. The delivery of the Speech, including the various inflections and tonal variations, defies the one-dimensional meaning that the Plaintiffs have alleged in the Statement of Claim. In the circumstances, no reasonable man would take the Words Complained Of literally. In this respect, the 1<sup>st</sup> Defendant will rely on the actual recording of the Speech.

23. Further, in context of the matters pleaded above, all references to the 1<sup>st</sup> Plaintiff in the Speech included references to the Barisan Nasional government.

#### FAIR COMMENT

24. Further and / or in the alternative if and so far as the Words Complained Of refer to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs, they are fair comment made by the 1<sup>st</sup> Defendant, as a Member of Parliament, in good faith and without malice upon a matter of public interest, which any fair-minded person could have

arrived at. The 1<sup>st</sup> Defendant was in fact questioning the dubious fiscal and economic decisions of the federal government, headed by the 1<sup>st</sup> Plaintiff as Prime Minister of Malaysia.

25. In amplification of paragraph 24 above, the Words Complained Of taken in the context of the entire Speech and against the background of the Fuel Subsidy issue, were expressions of opinion honestly held by the 1<sup>st</sup> Defendant and/or the general public because:

25.1 it is reasonable to infer this as an instance of depriving the public of their entitlement and the misuse of public funds by the federal government, the 1<sup>st</sup> Plaintiff and/or the 2<sup>nd</sup> Plaintiff;

25.2 it is a genuine concern that fuel subsidies and hidden taxes may have been improperly channeled to undeserving projects, expense and/or individuals;

25.3 it is the duty and right of the 1<sup>st</sup> Defendant to demand transparency in the handling of the Fuel Subsidy Issue and/or misuse of the hidden taxes by the 1<sup>st</sup> Plaintiff;

25.4 any fair-minded individual listening to the Speech would and could have arrived at the same opinion given the prevalent discourse about the Fuel Subsidy issue, hidden taxes and the 2<sup>nd</sup> Plaintiff's spending pattern.

26. The factual premise of the defence of fair comment is constituted by the matters pleaded above, in particular:

26.1 The prevailing government policy was to provide a fuel subsidy to the Malaysian people;

26.2 The Fuel Subsidy was to protect the Malaysian public from the expensive global crude oil prices, which would impose an undue burden on the Malaysian public as oil prices, especially increased oil prices, would directly and indirectly affect prices of, inter alia, consumer goods;

26.3 Towards the end of 2014, the Fuel Subsidy was removed;

26.4 The removal of the Fuel Subsidy had the ultimate effect that the Malaysian public were forced to pay more for a variety of consumer goods, including fuel, and created a profit for the government at the expense of the people;

26.5 Following the removal of the Fuel Subsidy, local fuel prices which should have been much lower do not correspondingly reflect the plummet in global crude oil prices since around July 2014; and

26.6 Notwithstanding the removal of the Fuel Subsidy, fuel prices in Malaysia should have been lower than the prevailing prices set by the government.

26A. Where necessary, the 1<sup>st</sup> Defendant will rely on Section 9 of the Defamation Act 1957.

QUALIFIED PRIVILEGE

27. Further and / or in the alternative, the 1<sup>st</sup> Defendant contends that the Speech or any part thereof was made on an occasion of qualified privilege.

Particulars

- (a) The 1<sup>st</sup> Defendant repeats the matters pleaded above.
  
  - (b) The 1<sup>st</sup> Defendant as an elected Member of Parliament and Vice-President of Parti Keadilan Rakyat, had and still has a moral, political and/or social duty to question the government's expenditure and demand transparency of the same, and the public at large has a corresponding legitimate interest in being informed of the government's questionable expenditure and/or the 1<sup>st</sup> Defendant and the public have a common or corresponding interest in the subject matter of the Speech.
28. For the reasons stated above, the 1<sup>st</sup> Defendant denies paragraphs 21, 23 and 26 of the Statement of Claim.
29. Save where hereinbefore expressly admitted, the 1<sup>st</sup> Defendant denies each and every allegation contained in the Statement of Claim as if the same was specifically put forth and traversed seriatim.

## COUNTER CLAIM

30. The 1<sup>st</sup> Defendant repeats all the paragraphs above by way of counter claim against the Plaintiffs.

31. In amplification of the above, the 1<sup>st</sup> Defendant contends that both Plaintiffs have been subjected to severe criticism in relation to various issues of public importance, including but not limited to, those related to FELDA and 1MDB. Various persons and organizations including the former Prime Minister of Malaysia Tun Dr Mahathir have made a litany of statements about both Plaintiffs which have adverse effect on the Plaintiffs' reputation. Yet the 1<sup>st</sup> Defendant has been almost exclusively singled out by the Plaintiffs by their instituting of this suit based on statements relating to their conduct. It is manifestly obvious that it is not the alleged defamation that propels the present suit. This suit is a means to suppress and victimise the 1<sup>st</sup> Defendant. Further, due to the 1<sup>st</sup> Defendant's fervent criticism of the federal government on the Fuel Subsidy issue at the material time, he has been victimized by the filing of this suit.

32. Further, Thehe Plaintiffs did not institute the present suit with the intention of obtaining genuine legal redress. This suit is—represents an attempt by the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs to stifle and stymie legitimate political discourse, specifically that emanating from the 1<sup>st</sup> Defendant who is a known critic of government policy and direction, and is therefore an abuse of

process. The 1<sup>st</sup> Defendant has suffered injury damages due to the Plaintiffs' action.

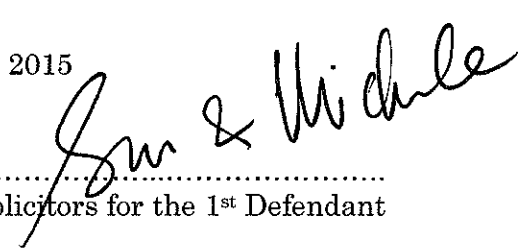
33. Wherefore, the 1<sup>st</sup> Defendant claims against the Plaintiffs:

- (a) general damages;
- (b) costs; and
- (c) all further or other relief which this Honourable Court deems fit.

Dated this 29<sup>th</sup> day of May 2015

.....t.t.....  
Solicitors for the 1<sup>st</sup> Defendant

Amended on this 8<sup>th</sup> day of July 2015

  
.....  
Solicitors for the 1<sup>st</sup> Defendant

This 1<sup>st</sup> Defendant's Amended Defence and Counterclaim is filed by Messrs Sun & Michele, solicitors for the 1<sup>st</sup> Defendant having an address for service at Suite 2.03, 2<sup>nd</sup> Floor, Wisma E&C, No 2 Lorong Dungun Kiri, Damansara Heights, 50490 Kuala Lumpur.

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(Our Ref: SM.298.13.L.SS)

*Defence-CC D1 – Amended (Eng)*