

TORT

Defamation – Article on PERKASA website commenting on pending defamation suit – Whether contents contemptuous of court and presiding judge – Whether President of PERKASA could be made guilty of “contempt by omission” even though knowledge or control of article not proven

Dato’ Ibrahim Ali v Datuk Seri Anwar Ibrahim
[2015] 1 CLJ 176, Court of Appeal

Facts An article commenting on the respondent’s pending defamation suit was published on the website of PERKASA, a non-governmental organisation. As he alleged that the article was contemptuous towards the court and the presiding judge, the respondent begun committal proceedings against Zainuddin Salleh, writer of the article (“the first contemnor”), and the President of PERKASA (“the appellant/second contemnor”). Despite denying that the impugned website was PERKASA’s, or the fact that he had any knowledge or was consulted on the publication of the article, the trial judge held the second contemnor liable for contempt. It was also held that as President of PERKASA, the second contemnor would have knowledge of the article’s contemptuous contents, and by failing to distance himself from the article, he was guilty of “contempt by omission”. The appellant appealed to the Court of Appeal.

Issue The issues before the Court of Appeal were (1) whether the impugned website (www.pribumiperkasa.com), where the article was published, was PERKASA’s mouthpiece; and (2) whether the trial judge erred in deciding that the appellant had knowledge of the article’s contemptuous contents at the time of its publication.

Held The Court of Appeal allowed the appeal and held that the trial judge erred, both on facts and in law, in deciding that the appellant had committed contempt of court. Even though it was held that the impugned website was effectively PERKASA’s mouthpiece as the websites’ contents were monitored by PERKASA’s office bearers, the owner or proprietor of a website would not have knowledge or retain the element of control over the publication of any materials on the website. As the appellant did not have actual or real knowledge and did not sanction the publication of the impugned article on the website, a mere passive role or silence on his part could not amount to contempt of court. Similarly, a case for “contempt by omission” was also unsustainable as there was no wilful disregard to any court order to do or restrain from doing an act.