

## CONSTITUTIONAL LAW

### Peaceful assembly – Responsibilities of organiser – Damage to property – Whether organisers had statutory obligations – Whether such obligations could amount to ground for private action by Government – Peaceful Assembly Act 2012, section 6

#### *Kerajaan Malaysia v Ambiga Sreenevasan & 14 others*

[Civil Appeal No. W-01(NCVC)(W)-48-02/2015], Court of Appeal

**Facts** The appellant (plaintiff) is the Federal Government of Malaysia while the respondents (defendants) are the organisers of the Bersih 3.0 Assembly (“the Assembly”). On the day of the Assembly, as the crowd started dispersing at the conclusion of the Assembly, a group of unidentified persons had breached the barricades set by the police. This in turn led to the use of water cannons and the firing of tear gas canisters by the police to disperse the crowd, which resulted in the damage of the appellant’s property ie the police vehicles. The appellant initiated a legal action against the respondents at the High Court seeking damages for the damage caused. The appellant alleged that the respondents had breached section 6<sup>1</sup> (“the Section”), particularly paragraph (2)(g)<sup>2</sup> (“the Paragraph”) of the Peaceful Assembly Act 2012 (“the Act”). The respondents, on the other hand, counterclaimed against the appellant. The High Court held that vicarious liability was not ascribed to the respondents as there was no special relationship established between the respondents and those who caused damage to the appellant’s property. The appellant appealed to the Court of Appeal.

**Issue** The main issue was whether the statutory obligations under the Section are grounds for a private action by the appellant against the respondents for the damage caused during the Assembly.

**Held** In dismissing the appeal, the court held that the objectives of the Act and the use of the word “ensure” in the Paragraph, merely connote a guideline instead of a legally binding obligation. Thus, the responsibilities spelt out in the Section do not amount to a statutory duty and that any violation or omission will not result in any liability on the respondents, which in turn cannot constitute a private cause of action.

ZUL RAFIQUE & partners  
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<sup>1</sup> Responsibilities of organisers.

<sup>2</sup> The organiser shall ensure that the assembly will not endanger health or cause damage to property or the environment.