

CONSTITUTIONAL LAW

Interpretation – Prime Minister – Minister – Public officer – Public office – Public services – Whether defendant public officer in public office – Interpretation Acts 1948 and 1967, sections 3 and 8(2) – Federal Constitution, articles 132 and 160

Tun Dr Mahathir bin Mohamad & Ors v Datuk Seri Mohd Najib bin Tun Hj Abdul Razak
[2017] 9 MLJ 1, High Court

Facts The first plaintiff is the former Prime Minister of Malaysia while the second and third plaintiffs are former members of the United Malays National Organisation (“UMNO”), the main political party in a coalition, Barisan National (“BN”) forming the present government. The defendant is the current Prime Minister of Malaysia and the President of UMNO and Chairman of BN. The plaintiffs brought a claim against the defendant for the tort of misfeasance in public office and/or tort of breach of fiduciary duties in public office, for the alleged financial improprieties in a company wholly owned by the Government of Malaysia, 1Malaysia Development Berhad. The defendant sought to strike out the suit.

Issue The main issue was whether the defendant is a public officer in public office.

Held In striking out the suit, the High Court held that in order to prove the tort of misfeasance in public office and breach of fiduciary duties in public office, the first ingredient that must be proven is that the defendant is a “public officer” in public office. Based on the definitions and references made to sections 3 and 8(2) of the Interpretations Act 1948 and 1967, a “public officer” refers to a person in the office of any public service, which extends to a Prime Minister. However, it was concluded that, since articles 132(3)(a) and 160(2) of the Federal Constitution exclude a Prime Minister from public services, the defendant is held to not be a “public officer” and does not hold public office.