

LAND LAW

Subdivision of land – Title to road reserves issued in landowner’s name – Entrance and exit to part of road reserves by owner of subdivided lots – Whether amounted to trespass – Whether access to road reserves lawful – Sabah Land Ordinance

Petronas Dagangan Bhd v Karamunting Development Sdn Bhd

[2016] 5 CLJ 56, Court of Appeal

Facts The respondent (defendant), a landowner, had applied to subdivide its land (“the Land”). The land was subdivided into several titled lots including a cinema lot (“subdivided lot”) and a single title encompassing the entire road reserves (“road reserves”) of the land. The appellant (plaintiff) acquired of the subdivided lot and built a petrol service station with a direct entrance and exit to parts of the road reserves. The dispute began when the respondent threatened to fence up all access to the appellant’s petrol service station through the road reserves. At the High Court, the appellant applied for a declaration that they were entitled to the use and enjoyment of the access over the road reserves from their petrol service station to the main road. The respondent counterclaimed a declaration that the land within for the road reserves was alienated to the respondent as private property and that the appellant committed a trespass. The appellant subsequently withdrew the action as the land office granted it a right of way over the road reserves to the petrol station. The counterclaim proceeded at trial and was allowed by the High Court judge. Aggrieved, the appellant appealed.

Issue The issue was whether the appellant had a right to use part of the road reserves as access to their petrol station built on the subdivided lot.

Held In allowing the appeal, the court held that the appellant did not commit trespass on the basis that the appellant, as the owner of the subdivided lot, has equitable rights to access the road reserves without imposition of any payment or terms by the respondent. The court further ruled that the Sabah Land Ordinance is not modelled on the Torrens System of land registration as it does not have any provisions conferring indefeasibility of title upon registration. Therefore, the respondent could not assert absolute right to deal with the road reserves by relying on the fact that the respondent’s name was registered as the owner on the title of the road reserves.