
ADMINISTRATIVE LAW

TIME LIMIT FOR JUDICIAL REVIEW: WHEN DOES TIME START TO RUN?

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INTRODUCTION

In the recent Court of Appeal decision in the case of [Ketua Pengarah Hasil Dalam Negeri v. Yayasan Buah Pinggang Kebangsaan Malaysia](#), Justices of the Court of Appeal, Justice Datuk Nantha Balan, Justice Dato' Mohd Nazlan bin Mohd Ghazali and Justice Dato' Dr. Choo Kah Sing clarified that the time limit for initiating a Judicial Review application begins from the date when the public authority makes a decision on the appeal by the affected party, and not from the date of the initial decision by the public authority. This is regardless of whether the outcome of the appeal is a reiteration of the initial decision.

BRIEF FACTS

Yayasan Buah Pinggang Kebangsaan Malaysia, also known as the National Kidney Foundation of Malaysia ("NKF") is a registered non-profit organization with tax-exempt status. NKF underwent a tax audit by LHDN in March 2019. In August 2019, LHDN informed NKF of violations which led to the revocation of its tax-exempt status. NKF made representations to LHDN and to the Ministry of Finance ("MOF") for a reconsideration and intervention on the case and for the tax-exempt status to be reinstated.

After several exchanges of correspondence, LHDN issued a letter in June 2020 that their decision to revoke NKF's tax-exempt status remained the same as per their initial decision in August 2019. NKF then filed for Judicial Review in September 2020 wherein leave was granted by the High Court. LHDN was aggrieved by the High Court's decision to grant leave and appealed the decision to the Court of Appeal.

ISSUE BEFORE THE COURT OF APPEAL

The issue on appeal was whether, for the purpose of Judicial Review, NKF could rely on LHDN's decision dated 17 June 2020, which reaffirmed their initial decision to revoke tax-exempt status. LHDN argued that the decision subject to Judicial Review should be the initial decision on 29 August 2019, and not the subsequent reaffirmation in June 2020. Thus, LHDN maintained that the Judicial Review application filed by NKF based on the decision in June 2020, was out of time¹.

DECISION OF THE COURT OF APPEAL

In delivering the judgment for the Court of Appeal, Justice Datuk Nantha Balan emphasised that the letter dated 29 August 2019, which initially revoked NKF's tax-exempt status, was not conclusive because LHDN showed a willingness to reconsider this decision through subsequent actions such as requesting additional information and meetings. Therefore, the time to file for Judicial Review only started running from LHDN's reiteration of the decision on 17 June 2020.

¹ Order 53 Rule 3 (6) - An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of application first arose or when the decision is first communicated to the applicant.

The Court of Appeal took the position that where the public authority's conduct indicated a willingness to reconsider its earlier decision, then time runs from the later decision even if it was to reiterate or reconfirm and maintain the earlier decision. Therefore, the appeal was dismissed, and the Court of Appeal directed the High Court to hear the Judicial Review application by NKF expeditiously.

KEY TAKEAWAYS

This case clarifies the law on the time limit for Judicial Review under Order 53 Rules of Court 2012, and that the time for initiating a Judicial Review application may be affected by the actions of the relevant public authority after the initial decision. If the public authority displays a willingness to reconsider its initial decision, then the time limit for filing a Judicial Review application at the High Court begins upon the public authority's decision on the appeal, not from the date of the initial decision. Active engagement and representation with the public authorities to appeal against the initial decision are crucial steps to be taken if an aggrieved party disagrees with a decision, as demonstrated by NKF's representations to both the LHDN and the MOF regarding the revocation of its tax-exempt status.

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