

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

DALAM WILAYAH PERSEKUTUAN, MALAYSIA

(BAHAGIAN SIVIL)

ORIGINATING SUMMONS NO. _____ 2008

In the matter of Order 7, rule 2
of the Rules of High Court,
1980

And

In the matter of Articles 40(1),
43(3) and 55(3) of the Federal
Constitution

And

In the matter of letter dated 17th
January, 2008 to the plaintiff,
Parliamentary Opposition
Leader from the Secretary,
Election Commission, Malaysia

BETWEEN

LIM KIT SIANG

...PLAINTIFF

AND

1. ELECTION COMMISSION, MALAYSIA

2. GOVERNMENT OF MALAYSIA ...DEFENDANTS

AFFIDAVIT

I, LIM KIT SIANG (NRIC No. 410220-01-5063) of full age and a citizen of Malaysia residing at No. 22, Persiaran Besi, 11600 Pulau Pinang do solemnly and sincerely affirm and say as follows:-

1. I am the plaintiff abovenamed.
2. I am the Parliamentary Opposition Leader and Member of Parliament for Ipoh Timor, Perak. I will be offering myself as a candidate in the forthcoming general election.
3. I have personal knowledge of the facts and circumstances relating to the matter herein and from documents in my possession, save otherwise stated.
4. The first defendant is the Election Commission, Malaysia
5. The second defendant is the Government of Malaysia at whose behest the first defendant will be conducting the forthcoming general election and, consequently, the second defendant is a proper party to the proceedings herein.

6. Pursuant to letter dated 7th January, 2008 I had written to the Secretary, Election Commission, Malaysia, Dartuk Haji Kamaruzaman bin Haji Mohd Noor, for the purpose of discussing the role of a 'care-taker government' during the forthcoming general election.
7. By letter dated 17th January, 2008 [xerox copy exhibited herewith marked, 'LKS-1'] the Secretary, Election Commission, Malaysia replied, inter alia,:-

' 2. I am pleased to inform you that having regard to the law relating to our national general election including the Federal Constitution there is no mention of 'care-taker government'. In view of this, when Parliament or the State Assemblies are dissolved, it is the government of the day which carries on administration of the government until a new government is sworn in after the results of the general election are made public by the Election Commission (SPR) Malaysia.'

8. In response to the assertions of the Secretary, Election Commission, Malaysia adverted to hereinbefore, I respectfully state as follows:-
 - (i) When Parliament is dissolved pursuant to Article 55 (3) of the Federal Constitution, having regard to the provisions of Article 40 (1) and 43 (3), although there is no reference to a 'care-taker government' in the Federal

Constitution, during the period after Parliament is dissolved and the swearing in of a new cabinet after the general election, nevertheless a 'care-taker government' is, having regard to the scheme and spirit of Articles 40 (1), 43 (3) and 55 (3), required to replace the government of the day during this period; and

- (ii) There is high authority of what is stated in paragraph (i) hereinbefore, in what is stated by the eminent jurist, Sir Ivor Jennings, in his book 'Cabinet Government' in relation to the ministry which was set up by Sir Winston Churchill after the second World War before and awaiting the general election in 1945 which was known as a 'care-taker government'. Likewise, the scheme and spirit of Articles 40 (1), 43 (3) and 55 (3) of the Federal Constitution make it obligatory for the setting up of a 'care-taker government' in place of the government of the day after Parliament is dissolved until the setting up of a new government after the general election.

9. I respectfully state a 'care-taker government' can only carry on the day-to-day administration of government, and not make policy decisions or provide for allocation of funds for projects nationally which can only be determined by the new government established after the general election.

10. I respectfully state a 'care-taker government' functions in line with the provisions of the Federal Constitution adverted to hereinbefore subject to the limitation that it is day-to-day administration of government which it can carry out, and nothing more. It is in the public interest that a 'care-taker government' operates within the scope of day-to-day administration to ensure there is no abuse of power or misuse of public funds and facilities by the outgoing cabinet in the interests of the Barisan Nasional during the campaign leading up to the general election.
11. It is in the public interest that there should be a campaign leading up to the general election which is clean, fair and meaningful without abuse of power or corrupt practice by the outgoing cabinet in the form of misuse of public funds and facilities in the interests of the Barisan Nasional. A clean, fair and meaningful campaign is the basic structure of democracy.
12. Further, a clean, fair and meaningful government is a legitimate expectation of every citizen in the country and it is the duty of the first and second defendants to ensure that this objective is attained in the campaign leading up to the general election.
13. As the first defendant is independent of the government and the opposition and is a body which is set up by the Yang Di-Pertuan Agong after consultations with the Conference of Rulers under Article 114 (1) of the Federal Constitution, it will only command public confidence under Article 114 (2) if it acts independently and ensures

that there is a fair, clean and meaningful campaign leading up to the forthcoming general election.

14. Wherefore, I respectfully pray for orders in terms of paragraphs (1), (2) and (3) of the summons herein or in terms of any other or further order deemed fit and proper by this Honourable Court.

JURAT

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Deposed by **LIM KIT SIANG**)
(**NRIC NO : 410220-01-5063**))
in Kuala Lumpur)
at am/pm)
on this day of February, 2008)

Before me,

.....
Commissioner for oaths

This **AFFIDAVIT** is affirmed on 4th February, 2008 and filed on 4th February, 2008 by Messrs Karpal Singh & Co., solicitors for the applicant above, whose address for service is at No. 67, Jalan Pudu Lama, 50200, Kuala Lumpur

