

Federal Court Dismisses Landowner's Motion for Leave to Appeal on Questions of Law Concerning Right of Wayleave

On 24.6.2025, the Federal Court in Mohd Azman bin Yaacob v. Tenaga Nasional Berhad (Civil Application No. 08(f)-86-03/2025(D)) dismissed the applicant's motion for leave to appeal against the Court of Appeal's decision, which ruled that the wayleave obtained by Tenaga Nasional Berhad ("TNB") remains valid and binding on a subsequent landowner.

Facts

The applicant is a subsequent landowner who alleged trespass against TNB for existing electrical transmission lines erected well before applicant's ownership of the land.

For the construction of the electricity infrastructure, TNB obtained the requisite statutory wayleave *via* s. 53 of the Electricity Act 1949 ("EA 1949") (now s. 11 of the Electricity Supply Act 1990 ("ESA 1990")) sometime in 1979. Pursuant to the procedures prescribed thereto, the State Authority served statutory notices to the affected landowners and received no objections for the intended wayleave. In the absence of any such objections, TNB was deemed to have legally obtained the right of wayleave over the affected lands.

In 2017, the applicant purchased the subdivided lot of one of the affected lands and became the registered proprietor. Notably, given that the transmission lines had already been erected prior to the applicant's purchase, the applicant had full knowledge of the existence of TNB's transmission lines.

High Court and Court of Appeal Decisions

In brief, the High Court found that TNB had not committed trespass as it was proven that it had complied with all the requisites and procedures laid down under s. 53 EA 1949. There was, therefore, a validly obtained wayleave for the construction of the transmission lines.

On appeal, the Court of Appeal unanimously affirmed the High Court decision that TNB had duly complied with all the statutory procedures under s. 53 EA 1949 to obtain and maintain its wayleave over the applicant's subdivided lot.

In its judgment, the Court of Appeal held, *inter alia*, that:-

- (i) s. 53 (now s. 11 ESA 1990) and s. 56 (now s. 15 ESA 1990) EA 1949 provide for two different manners for the obtainment of wayleave; the former is by way of wayleave procedure, while the latter is by way of a wayleave agreement;
- (ii) the reliance upon and the involvement of the State Authority in the service of the statutory notice was appropriate under s. 53 EA 1949;
- (iii) endorsement of wayleave upon the instrument document of title was not statutorily required at the material time and the non-endorsement of the same

does not impugn the validity of the wayleave; and

- (iv) the validly obtained wayleave survives despite the subsequent change of landownership.

Additionally, the Court of Appeal, in finding that ss. 53 and 56 EA 1949 are two distinct procedures in obtaining the same singular wayleave, held that the case of Tenaga Nasional Bhd v. Dolomite Industrial Park Sdn Bhd [2000] 2 MLJ 133, which expressed that a wayleave agreement under s. 56 EA 1949 can only be realised after due compliance with the procedures under s. 53 EA 1949, was decided *per incuriam*.

Leave to Appeal to the Federal Court

Briefly, the applicant's proposed questions of law concerned the following broad grounds:-

- (i) the proper construction of ss. 53 and 56 EA 1949;
- (ii) the entitlement of a subsequent landowner to compensation; and
- (iii) the requirement for endorsement of wayleave.

However, the Federal Court dismissed the applicant's motion for leave to appeal to the Federal Court as the applicant's motion failed to satisfy the requirements of s. 96(a) Courts of Judicature Act 1964 on the conditions to appeal.

Conclusion

The Court of Appeal's decision is a welcomed departure from its earlier ruling in Dolomite Industrial Park, *supra*, in its interpretation of s. 53 EA 1949 (now s. 11 ESA 1990) in its plain and ordinary meaning. It is a seminal case on the processes and procedures for obtaining

wayleave, the enduring nature of wayleave rights validly obtained, as well as the corresponding rights of subsequent owners of affected lands.

The Court of Appeal's decision is reported as Mohd Azman bin Yaacob v. Tenaga Nasional Bhd [2025] 2 MLJ 414.

Mr. David Ng Yew Kiat and Mr. Ananthan Moorthi from our Firm acted for TNB from the High Court to the Federal Court.

Written by:

Kamiliacheng Binti Achmadcheng Hikman

Pupil-in-Chambers

For any related enquiries, please contact our Partner, David Ng (dn@steventhiru.my) or Senior Associate, Ananthan Moorthi (anm@steventhiru.my).

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