



**MALAYSIA
IN THE HIGH COURT OF MALAYA AT IPOH
IN THE STATE OF PERAK DARUL RIDZUAN
[PETISYEN PILIHAN RAYA NO. 26PP-2-06/2013]**

BETWEEN

ABDUL KARIM ABDUL RASID

... PETITIONER

AND

1. DATO' SITI SALMAH MAT JUSAK

... RESPONDENTS

**2. PEGAWAI PENGURUS PILIHAN RAYA
BAHAGIAN PILIHAN RAYA DEWAN
UNDANGAN NEGERI PERAK N20
LUBOK MERBAU HAJI ABDUL HALIM
BIN HAMED**

3. SURUHANJAYA PILIHAN RAYA

JUDGMENT

Objections to election petitions are issues of law which should be disposed of as preliminary issues: see *Norbert Choong Kai Chong v. Mohamed Idris bin Haji Ibrahim & Anor* [1980] 1 MLJ 316. The law reports are replete with authorities to say that the statutory requirements of election laws are mandatory and must be strictly observed: see for instance *Tengku Korish v. Mohamed bin Jusoh & Anor* [1969] 1 LNS 189; [1970] 1 MLJ 6; *Devan Nair v. Yong Kuan Teik* [1967] 1 LNS 37; *Chong Thain Vun v. Watson & Anor and 2 Other Appeals* [1968] 1 MLJ 65; *Harcharan Singh v. Mohinder Singh* AIR 1968 SC 1500. In *Tan Sri Joseph Kurup v. Danny Anthony Andipai & Anor* [2009] 3 MLJ 1 the Federal Court held, *inter alia* that non compliance with the Election Petition Rules 1954 ('the Rules') must necessarily result in a jurisdictional defect and the court has no

power to entertain the petition. Hence scrupulous and meticulous care is needed in drafting, filing and serving election petitions.

One of the grounds of objections raised by the 1st respondent relates to service of the petition. It was argued that the petition is defective in that the petition and the notice of presentation of petition were filed and served by a law firm, namely Tetuan Amin Amirul & Partners and not by an advocate authorized by the petitioner. Having regard to rule 9 read with rule 34 of the Rules I am constrained to agree with the 1st respondent. For context the two rules are reproduced below:

“9. With the petition the petitioner or petitioners shall leave at the office of the Registrar a writing, signed by him or them, giving the name of an advocate whom he or they authorize to act as his or their advocate or stating that he or they act for himself or themselves, as the case may be, and in either case giving an address within Malaysia at which notices may be left. Every such writing shall be stamped with the duty payable thereon under the law for the time being in force.”

“34. An advocate shall, immediately upon his appointment as such, leave written notice thereof at the office of the Registrar.”

The High Court of Kuching had occasion to deal with these provisions in *Dayrell Walter Entrie v. Datuk Patinggi Tan Sri Alfred Jabu Numpang* [2007] 7 CLJ 11 where it was held as follows:

“However, the petitioner has named a firm of ‘advocates’ and not ‘an advocate’ in the notice ‘appointment of advocate by petitioner’ dated 13 July 2006 filed by the petitioner (encl. 7). Since r. 9 of the rules contains a reference to ‘an advocate’ and not a firm of advocates, I agree with the submission of both the learned counsel for the 3rd respondent that the petitioner has not complied with r. 9 and r. 34 of the rules which are couched in mandatory terms like r. 3(2) of the rules. That being the case, by virtue of the plethora of authorities that election laws are to be strictly complied with, by naming a firm of advocates and not his individual advocate or advocates and by not immediately leaving a written notice of appointment of advocate, the petitioner and the petitioner’s advocate has failed to comply with r. 9 and r. 34 of the rules which warrants the petition to be dismissed on both grounds.”

In her deliberation Lau Bee Lan J referred to the unreported decision, also of the Kuching High Court in *Wilfred Nissom v. Datuk Stephen Yong & Anor; Mohamad Shamsuddin bin Moktar v. Chong Kim Mook & Anor* (Kuching Election Petition No: K 1 & 2 of 1979) where Charles Ho J said:

“These rules, as I understand them, require:

- (a) ...
- (b) ...
- (c) an individual advocate not a firm of solicitors is to be appointed by the petitioner to act for him. I am aware that in an ordinary civil suit it is normal practice for the parties to appoint a firm of solicitors to act. However, on a proper interpretation, rule 9 read together with rule 34 clearly requires that an individual advocate to be appointed.”

Section 3 of the Interpretation Acts, 1948 and 1967 (‘the Interpretation Acts’) defines an advocate to mean a person entitled to

practice as an advocate or as an advocate and solicitor under the law in force in any part of Malaysia. A law firm does not practice law. An advocate and solicitor does. Clearly the law firm of Amin Amirul & Partners, not being a natural person and not being a person entitled to practice law is not an advocate within the meaning of the Interpretation Acts and the Rules and therefore had no authority to file and serve the petition on behalf of the petitioner. Even assuming for a moment that the law firm of Amin Amirul & Partners is an advocate within the meaning of rule 9 and rule 34 of the Rules, the fact remains that the firm is not listed in the notice of appointment filed by the petitioner pursuant to rule 9 of the Rules. There are seven advocates named in the notice of appointment and they are:

- (1) Mohamed Hanifa bin Maidin.
- (2) Aminuddin bin Zulkipli.
- (3) Nasar Khan bin Mirbas Khan.
- (4) Haji Asmuni bin Awi.
- (5) Azhar bin Arman Ali.
- (6) Dr. Zulkarnain Lokman.
- (7) Mohd Fathi bin Mat Zin.

It is these advocates and only these advocates who are authorized to act for the petitioner and no others. However the truth of the matter is none of them can actually act for the petitioner as none has filed in court the written notice of appointment as required by rule 34 of the Rules. The written notice of appointment is a prerequisite, a precondition for an advocate to act for the petitioner without which



the advocate has no *locus standi* to appear before the court on behalf of the petitioner. Since no such notice has been filed, coupled with the fact that the petition and the notice of presentation of petition were not filed and served by the petitioner himself but by a law firm who is a stranger to boot, no valid petition has in fact been presented within the time prescribed for the filing of the petition. In the circumstances I have no option but to strike out the petition with costs and I so order.

(ABDUL RAHMAN SEBLI)
Election Judge

DATED: 30 JULY 2013

Counsel:

For the petitioner - Azhar Arman Ali (Aminuddin Zulkipli and Fathi M Zin with him); M/s Amin Amirul & Partners

For the first respondent - Firoz Hussein Ahmad (Mohd Hasnal Abdul Aziz with him); M/s Ong-Hanim & Badrul

For the second and third respondents - Norazmi Narawi (Muhamad Anas, Norina Bahadon, Khairul Nizam with him) Senior Federal Counsel of the Attorney General's Chambers