

**DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM  
DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA  
[SEMAKAN KEHAKIMAN NO.: BA-25-52-08/2021]**

Dalam perkara mengenai “Pengemukakan Pelan Dan Dokumen untuk kebenaran merancang hanya oleh perancang bandar berdaftar sahaja”.

Dalam perkara mengenai “Hak Undang-Undang Pihak Yang Berlayakkan Untuk Menyediakan Dan Mengemukakan Pelan Serta Dokumen Untuk Kebenaran Merancang”.

Dan

Dalam Perkara mengenai seksyen 21, 21c, seksyen 58(2)(H) dan 58(3) Akta Perancang Bandar & Desa 1976.

Dan

Seksyen 2, & seksyen 8(2)(A), (B), (C) & (D) Akta Arkitek 1967.

Dan

Seksyen 23 Interpretation Act 1948 & 1967. Dan

Dalam perkara mengenai Akta Spesifik Relif 1950.

Dan

Dalam Perkara mengenai Aturan 53  
Kaedah-Kaedah Mahkamah 2012

**ANTARA**

**SPATIAL DESIGN ARCHITECTS SDN BHD**

[No. Syarikat: 1723922-H]

**... PEMOHON**

**DAN**

- 1. MAJLIS PERBANDARAN KLANG**
- 2. KETUA PENGARAH JABATAN PERANCANG BANDAR &  
DESA NEGERI SELANGOR**
- 3. KETUA PENGARAH JABATAN PERANCANG BANDAR &  
DESA SEMENANJUNG MALAYSIA**
- 4. MENTERI KEMENTERIAN PERUMAHAN DAN  
KERAJAAN TEMPATAN      ... RESPONDEN RESPONDEN**

**JUDGEMENT**

[1] This is an application seeking leave for judicial review. This court dismissed this application for leave to file a judicial review. This is the grounds of this court's decision in dismissing the leave application.

[2] The applicant is a consultant appointed by the landowners to submit 7 Planning Permission applications pursuant to section 21 of the Town and Country Planning Act 1976.

**Factual Background**

[3] The factual matrix based on the applicant's submissions is that on 22.12.2020 there was an electronic online submission of the 7 Planning Permission applications at the One Stop Centre ("OSC").

[4] The response from the OSC dated 30.12.2020 *inter alia* are as follows:

“Permohonan dalam talian (OSC 3.0 Plus) dan secara hardcopy hendaklah dikemukakan oleh Perancang Bandar Berdaftar.”

[5] There was a further remark of incomplete documents.

[6] On 06.01.2021, the applicant sent a representative to make inquiries at the OSC Counter. The applicant's representative was verbally informed by the OSC that the Planning Permission application can only be made by a Registered Town Planner with reference to the Planning Permission Application Checklist by the Klang Municipal Council One Stop Center (OSC) and as directed accordingly by the second respondent.

[7] Between 02.02.2021 and 15.02.2021 the applicant contacted the landowners to discuss the Planning Permission applications and made a review at the OSC Counter.

[8] Between 17.02.2021 and 23.02.2021 the applicant attempted to contact the second respondent in Shah Alam to make inquiries and refer the matter to the department.

[9] The applicant's representative had on 09.03.2021 went to the OSC Counter to seek further clarification on the OSC's comments on the Planning Permission applications. The applicant's representative has been verbally informed that:

“The practice of applying for Planning Permission can only be made by a Registered Town Planner and has been practiced as such for 20 years according to instructions, and circulars issued by the Town and Country Planning Department at the State level and/or “rules” determined by the Town and Country Planning Department at the level of Peninsular Malaysia under direction of the Ministry of Housing and Local Government (KPKT)”

[10] The applicant’s search revealed there were seculars (Pekeliling) which only allowed Perancang Bandar Berdaftar to submit the Plans [Pekeliling JPBD Selangor 2005 Bil. 1, Pekeliling JPBJ Selangor Bil. 1 issued by the second respondent].

[11] The applicant wrote to the second respondent on 25.03.2021 to inform them on the remarks.

[12] On 31.03.2021 and 03.04.2021 the applicant’s representative contacted the second respondent to follow-up pertaining to the applicant’s letter dated 25.03.2021.

[13] The applicant received a reply from the second respondent through a reply letter dated 04.04.2021 stating *inter alia* that:

- “(i) Amalan semasa yang digunapakai oleh PBT-PBT di Negeri Selangor bagi panduan orang yang berkecualan menyediakan dan mengemukakan pelan serta dokumen untuk Kebenaran Merancang adalah mengikut dasar dan panduan di PBT masing-masing berkenaan layanan pemaian.
- (ii) Pihak Jabatan sedia maklum terhadap peruntukan seksyen 21C(b), 58(2)(h) dan (3) Akta 172... dalam melaksanakan perkara tersebut, maka satu kaedah orang yang berkecualan menyediakan dan mengemukakan pelan serta dokumen untuk

Kebenaran Merancang seperti diperuntukkan di bawah seksyen 5(1) Akta 172 perlu disediakan oleh Kerajaan Negeri melalui PLANMalaysia... tetapi tiada kesepakatan antara Badan Profession yang berkaitan terhadap draft kaedah tersebut.

- (iii) Jabatan berpendapatan bahawa amalan semasa boleh diteruskan untuk mengelakkan berlaku kekeliruan di kalangan pihak memproses permohonan dan pihak yang mengemukakan permohonan di Negeri Selangor...”

[14] Through the Annual General Meeting (‘AGM’) of Pertubuhan Arkitek Malaysia (PAM) held on 17.04.2021 and further resumed on 24.04.2021, the applicant highlighted issues pertaining to the eligibility of architects to submit the Planning Permission application to Pertubuhan Arkitek Malaysia (PAM).

[15] Through letters dated 25.04.2021, the applicant has also checked with the first respondent regarding the basis of the remarks which is premised on the rejection of the applicant’s Planning Permission applications.

[16] Between 20.04.2021 and 28.04.2021 the applicant held meetings with the landowners to convey the feedback received and take further instructions pertaining to the Planning Permission applications.

[17] The first respondent replied *via* a letter dated 21.05.2021 and the applicant was requested to check and/or refer the relevant matter to the One Stop Counter (OSC) Center.

[18] On 08.06.2021, being the Directors of the applicant and the Professional Architect company registered with the Board of Architects Malaysia (LAM), Mr. Goo Huey Kiam and another director in the applicant’s company attended a special virtual meeting with LAM to refer to the issue of discrepancy on the remarks dated

30.12.2020 *vis-à-vis* the Architects Act 1967 in that the rights of the applicant are severely affected.

[19] Following that, the applicant through a letter from Messrs. Teng Weng Loong & Co dated 09.06.2021 to LAM highlighted to the said professional body on the needs to seek for further legal advice regarding the judicial review application as well as LAM's stance.

[20] LAM's letter dated 12.07.2021 to Messrs. Teng Weng Loong & Co, the applicant informed that LAM had referred the matter to the Ministry of Human Resources and decided that they would not initiate/partake in the judicial review application.

[21] On 15.06.2021, the applicant resubmitted the Planning Permission application online at OSC. On 22.06.2021, the applicant was informed the application was rejected.

[22] On 11.08.2021, the applicant filed this Extension of Time and Leave application for judicial review.

### **Principles relating to leave for Judicial Review**

[23] The guiding principles for leave for judicial review is that the Applicants must show *prima facie* that the application is not frivolous or vexatious and that there is some substance in the grounds supporting the application. In this regard, reference was made to the case of *WRP Asia Pacific Sdn Bhd v. Tenaga Nasional Bhd* [2012] 4 CLJ 478 which stated as follows:

“[12] For purposes of its application, the appellant had alluded to the statutory route of O. 53 of the Rules. Under this order two stages are anticipated, with the leave stage being the first, to be followed closely by the substantive hearing after successfully obtaining leave at the High Court. At the leave stage on a quick perusal of the material

available, if the court thinks that subsequently at the substantive hearing stage an arguable case may be disclosed, and the relief sought may be granted, leave should be granted (*IRC v. National Federation of Self-Employed and Small Business Ltd* [1982] AC 617). In Malaysia, the Federal Court in *Mohd Nordin Johan v. The Attorney-General, Malaysia* [1983] 1 CLJ 130; [1983] CLJ (Rep) 271 when allowing the appeal, opined that ‘the point taken was not frivolous to merit refusal of leave *in limine* and justified argument on a substantive motion for *certiorari*’. **Without the need to go into depth of the abundant authorities, suffice if we state that leave may be granted if the leave application is not thought of as frivolous, and if leave is granted, an arguable case in favour of granting the relief sought at the substantive hearing may be the resultant outcome.** A rider must be attached to the application though ie, unless the matter for judicial review is amenable to judicial review absolutely no success may be envisaged.”

[Emphasis added]

[24] Founded on the principles for judicial review, this court will proceed to consider and analyse the application.

### **Analysis and Findings**

[25] Judicial review is governed by Order 53 of the Rules of High Court 2012. Specifically, Order 53 rule 2 (4) of the Rules of Court states that any person who is adversely affected by the decision of any public authority shall be entitled to make the application.

[26] With regard to the timeline to file an application for judicial review, Order 53 rule 3(6) of the Rules of Court 2012 specifically

states that a judicial review application must be filed within 3 months of the date of the decision.

[27] Order 53 rule 3(6) of the Rules of Court 2012 provides:

“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.”

[28] In the case of *Mersing Omnibus Co Sdn Bhd v. The Minister of Labour & Anor* [1983] CLJ (Rep) 266, Eusoffe Abdoolcader FCJ Held:

“We took the point ourselves as it clearly goes to the jurisdiction of the Court from which leave to apply for *certiorari* was sought as O. 53 r. 1(1) stipulates that **no application for an order of *certiorari* shall be made unless leave therefore has been granted** and r. 1A which we have already adverted to enacts that **leave shall not be granted except in accordance with its specific provisions.**

Lord Hudson said in this judgment in *Secretary of State of Defence v. Warm* [1970] AC 934, 402 9at p.402): **Procedural sections are usually mandatory** and there is nothing which points to the contrary in this case.”

[Emphasis added]

[29] In *Pengarah Kastam Negeri Johor & Anor v. Kedai Makan Kebun The (Sutera Utama) Sdn Bhd & Ors and Anor* Appeal 2014, the Court of Appeal held that the requirements that needed to be complied with by the applicant were mandatory in nature and must be strictly adhered to.



**[30]** The authorities cited state that the law is trite while the threshold for leave is not high, the adherence to the requirements and procedures set out in Order 53 have to be strictly enforced by the courts.

**[31]** What are the facts in this case? The applicant had sought to submit the planning permission but was rejected on the basis that it was not submitted by a registered town planner. Subsequently, the applicants submitted another application on 22.6.2021. The second decision was rejected due to insufficiency of documents which were required.

**[32]** Hence, the issue of the planning permission not being submitted by a registered town planner only arose at the first decision. For the second decision, the issue was the required documentation was not provided by the applicants.

**[33]** Here, the first decision by the respondent was made on 30.12.2020. The three months to file the judicial review application would end on 29.3.2021. The second decision was made on 22.6.2021. The three months to file would end on 21.9.2021. This application for judicial review was filed on 11.8.2021.

**[34]** Hence the first decision would be out of time but the second decision would be within the 3 months time limit.

**[35]** As the applicant has prayed for an abridgement of time, this court may conclude that the decision that the applicant is seeking an abridgement of time is the first decision. It must be stated here that the applicant did not make clear in the applicant's application for judicial review which decision is being challenged.

**[36]** Can the court allow an abridgement of time? Order 53 rule 3 (7) of the Rules of Court 2012 goes on to state:

“The Court may, upon an application, extend the time specified in rule 3(6) and if it considers that there is a good reason for doing so.”

[37] Hence, founded on Order 53 rule 3 (7) of the Rules of Court 2012, the court may grant an extension of time of the time specified in rule 3 (6) and if the court considers there is good reason.

[38] What are good reasons for the extension of time? The Court of Appeal in *Ketua Pengarah Kastam dan Eksais v. Coach Malaysia Sdn Bhd* [2019] 4 CLJ 454 (CA) held that “One ‘good reason’ is enough to entitled the applicant an extension of time”.

[39] The Privy Council in *Maharaj v. National Energy Corporation of Trinidad and Tobago* [2019] 2 LRC 693 observed as follows on the element of prejudice in the test for determining good reasons for extending time to apply for judicial review:

“[38] In the same way, questions of prejudice or detriment will often be highly relevant when determining whether to grant an extension of time to apply for judicial review. **Here it is important to emphasise that the statutory test is not one of good reason for delay but the broader test of good reason for extending time.** This will be likely to bring in many considerations beyond those relevant to an objectively good reason for the delay, including the importance of the issues, the prospect of success, the presence or absence of prejudice or detriment to good administration, and the public interest...”

[39] If prejudice and detriment are to be excluded from the assessment of lack of promptitude or whether a good reason exists for extending time, the law will not operate in an even-handed way. It is not **controversial in these proceedings that, even where there is considered to be a**

**good reason to extend time, leave may nevertheless be refused on grounds of the absence of prejudice or detriment, it is concluded that there is no good reason for extending time,** leave will be refused and their absence can never operate to the benefit of a claimant.

[Emphasis added]

[40] Are there good reasons in allowing the extension of time in this case? According to the applicant, the delay in filing the judicial review is due to the fact that the applicant had to consult with the Board of Architects prior to filing the judicial review application. When asked by this court whether there was a legal requirement that the applicant consult the Board of Architects, the applicant replied in the negative. However, the applicant stated that the applicant as a body which is part of the Board of Architects is only reasonable for the applicant to obtain Board of Architects' support.

[41] Nonetheless, in the letter from the applicant to consult Board of Architects, it is evident to this court that the applicant was not merely obtaining the support of Board of Architects. There is the possibility of Board of Architects coming in as amicus curie.

[42] It is the considered view of this court the decision from which the extension is sought is not identified (as there are two decisions). There was one decision on 30.12.2020 and subsequent decision on 22.06.2021. It was unclear which decision the applicant sought to challenge.

[43] There is no requirement in the law for the applicant to seek the support of Board of Architects. The applicant, in the considered view of this court, took it upon themselves to seek the support of the Board of Architects.

[44] In the case of *Seruan Gemilang Makmur Sdn Bhd v. Pegawai Kewangan Negeri Pahang* [2016] 4 CLJ 100 (CA), the Court of

Appeal upheld the dismissal of an application for an extension of time and rejected as a justification for the time extension the fact that there had been previous related proceedings that took an inordinate time to complete.

[45] In *Sayid Alwi Syed Ahmad v. ACP Wan Hassan Wan Ahmad & Ors* [2018] 1 LNS 1362 (HC), the High Court refused to grant the applicant an extension of time to challenge his suspension as a police corporal which was premised on his insufficiency of funds to engage counsel to represent him in the matter.

[46] In the case, this court is of the view the applicant could have filed the application for judicial review without having to consult the Board of Architects. Even if the applicant intended to consult the Board of Architect, the applicant could have done so while simultaneously filing the application for judicial review.

[47] Having considered all the facts before this court, this court is of the considered view there is no good reason for this court to allow the applicant's abridgment of time. Moreover, this court is of the considered view the decision for which the extension of time is sought is now academic, as the second decision did not require a register town planner to submit the application.

## **Conclusion**

[48] For the abovementioned reasons, this court dismissed the application for extension of time. Consequentially, the application seeking leave for judicial review is no longer before this court. Enclosure 1 is hereby dismissed with no order as to costs.

**Dated:** 1 DECEMBER 2022

**(SHAHNAZ SULAIMAN)**

Judge

High Court of Malaya Shah Alam

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**Case(s) referred to:**

*WRP Asia Pacific Sdn Bhd v. Tenaga Nasional Bhd [2012] 4 CLJ 478*

*Mersing Omnibus Co Sdn Bhd v. The Minister of Labour & Anor [1983] CLJ (Rep) 266*

*Ketua Pengarah Kastam dan Eksais v. Coach Malaysia Sdn Bhd*  
[2019] 4 CLJ 454

*Maharaj v. National Energy Corporation of Trinidad and Tobago*  
[2019] 2 LRC 693

*Seruan Gemilang Makmur Sdn Bhd v. Pegawai Kewangan Negeri Pahang* [2016] 4 CLJ 100

*Sayid Alwi Syed Ahmad v. ACP Wan Hassan Wan Ahmad & Ors*  
[2018] 1 LNS 1362

**Legislation referred to:**

Town and Country Planning Act 1976, s. 21

Rules of High Court 2012, O. 53

Rules of Court 2012, O. 53 rr. 2 (4), 3(6), (7)