

A **TENAGA NASIONAL BHD v. UNGGUL TANGKAS SDN BHD
& ANOR AND OTHER APPEALS**

FEDERAL COURT, PUTRAJAYA
ZULKEFLI AHMAD MAKINUDIN PCA
RICHARD MALANJUM CJ (SABAH & SARAWAK)

B ABU SAMAH NORDIN FCJ
ZAHARAH IBRAHIM FCJ
PRASAD SANDOSHAM ABRAHAM FCJ
[CIVIL APPEAL NO: 01(f)-12-04-2017(B)]
19 DECEMBER 2017

C **LAND LAW:** Acquisition of land – Award of compensation – Objection in Form N by registered owner of land – Application by applicant to intervene in land reference proceedings and to file valuer’s report – Whether applicant complied with procedure for objection to award – Whether lodging of Form N essential to object to award
D in land reference proceedings – Whether applicant had legal interest in land reference proceedings – Land acquired pursuant to s. 3(1)(a) of Land Acquisition Act 1960 – Whether acquiring party and paymaster was State Authority and not applicant – Land Acquisition Act 1960, ss. 37 & 38 – Rules of Court 2012, O. 15 r. 6(2)(b)

E **LAND LAW:** Acquisition of land – Award of compensation – Objection in Form N by registered owner of land – Application by applicant to intervene in land reference proceedings under O. 15 r. 6(2)(b) of Rules of Court 2012 – Whether applicant complied with procedure for objection to award – Whether s. 45(2) of Land Acquisition Act 1960 (‘LAA’) allows for enlargement of scope of specific framework under LAA – Whether s. 45(2) only provides for complementary role of Rules of Court 2012 – Whether O. 15 r. 6(2)(b) applicable – Whether application to intervene was an abuse of court process
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CIVIL PROCEDURE: Parties – Intervention – Application to intervene in land reference proceedings under O. 15 r. 6(2)(b) of Rules of Court 2012 – Whether s. 45(2) of Land Acquisition Act 1960 (‘LAA’) allows for enlargement of scope of specific framework under LAA – Whether s. 45(2) only provides for complementary role of Rules of Court 2012 – Whether O. 15 r. 6(2)(b) applicable – Whether application to intervene was an abuse of court process
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H The four appeals by the appellant (‘TNB’) originated from two land reference proceedings in the High Court. The respondent (‘Unggul Tangkas’) was the registered owner of two pieces of land (‘scheduled land’) which were acquired for TNB pursuant to s. 3(1)(a) of the Land Acquisition Act 1960 (‘LAA’). Unggul Tangkas was awarded RM12,593,196 (‘award’) as full compensation for its interest in the scheduled land, which was payable by TNB. Dissatisfied with the award, Unggul Tangkas filed an objection in Form N to the Land Administrator and initiated two land reference proceedings before the High Court. TNB filed applications under O. 15 r. 6 of the Rules of Court 2012 (‘ROC 2012’) for leave to intervene (‘encl. 7’) in the land reference proceedings and to file the valuer’s report and the relevant
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rebuttal reports. However, Unggul Tangkas contended that TNB failed to comply with the procedure for objection to the award as provided for under ss. 37(3) and 38 of the LAA and the applications to intervene were an abuse of the court process. The High Court allowed encl. 7 and TNB was added as the intervener/second respondent in the land reference proceedings. Nonetheless, TNB was not allowed to file its valuation and rebuttal reports. Aggrieved, Unggul Tangkas filed two appeals to the Court of Appeal against the order allowing TNB to intervene, whereas TNB lodged two appeals against the decision of the High Court which refused to allow TNB to adduce the valuation and the rebuttal reports. The Court of Appeal held that TNB should not be allowed to intervene and thus, the issue of adducing the valuation and the rebuttal reports should fail. TNB's motion for leave to appeal was allowed on the following questions of law: (i) whether the filing of an objection *vide* Form N pursuant to s. 37 of the LAA is the only mode available for a paymaster to be a party in a land reference proceeding before the High Court; (ii) whether the paymaster has a right to be made a party in a land reference proceeding before the High Court to safeguard its legal interest where the award of compensation made by the Land Administrator is being subject to challenge at the High Court; and (iii) whether the paymaster, upon being given leave to intervene in the land reference, can be denied the right to participate and file a valuer's report if necessary under the Third Schedule to the LAA. It was Unggul Tangkas' case that TNB could not reject to the award as only an interested person who has made a claim to the Land Administrator in due time and who has not accepted the Land Administrator's award may make an objection.

Held (dismissing appeals by TNB)

Per Zulkefli Ahmad Makinudin PCA delivering the judgment of the court:

- (1) The provisions of the LAA make it clear that the lodging of Form N is essential if a party seeks to object to an award in a land reference proceedings as it is aimed at an expeditious resolution of the objection to the award. Unggul Tangkas, who was aggrieved by the award handed down as compensation for the acquisition, had duly filed its objection in Form N under the LAA in order to challenge the amount of the compensation. During the land acquisition hearing before the Land Administrator, Unggul Tangkas and TNB were present. However, TNB was not named as a party thereto, nor was it present as an intervener. Neither did TNB present any valuation report pertaining to the scheduled land. (paras 27- 29)
- (2) Section 45(2) of the LAA does not allow for enlargement of the scope of the specific framework under the LAA to lend assistance to TNB's cause of action in encl. 7 to intervene in the acquisition proceedings under O. 15 r. 6(2)(b) of the ROC 2012. Section 45(2) of the LAA only provides for the complementary role of the ROC 2012 to the LAA if it

- A does not run contrary to the provisions of the LAA. Hence, O. 15 r. 6(2)(b) of the ROC 2012, in the context of the present case, did not have any application. (paras 30 & 31)
- B (3) TNB had no legal interest in the land reference proceedings. Being the paymaster, at the highest, TNB only had a pecuniary interest. The evidence showed that TNB was not aggrieved by the award but was merely apprehensive that the outcome of the land reference proceedings in the High Court might adversely affect its pocket. It was for the Land Administrator to defend the award and the Land Administrator was fully entitled to lead such evidence as he considered necessary to do so. (paras 37 & 38)
- C (4) The High Court was correct to deny TNB's right to tender any valuer's report in the land reference proceedings as every opportunity to tender the same was available to TNB who was present during the enquiry. The interest of TNB was clearly taken care by the legal team representing the Land Administrator and therefore, anything that needed to be submitted for TNB must have been taken up by the legal team. The same process could be replicated during the land reference proceedings before the High Court Judge. Land reference proceedings should not be protracted and delayed in the High Court by unnecessary interlocutory proceeding such as an application to intervene in encl. 7 filed by TNB. (para 39)
- D (5) The purposes of the acquisition of the scheduled land by the State Authority as spelt out under s. 3(1) of the LAA need to be considered in determining whether TNB could be allowed to intervene and become a party at the stage of the land reference proceedings in the High Court. The scheduled land was acquired under s. 3(1)(a) of the LAA as evident from Form D issued by the State Authority pursuant to s. 7 of the LAA. Therefore, there was no requirement for the acquiring party to comply with the provisions of ss. 3(3), 3(4), 3(5), 3(6), 3A and 3F of the LAA. In this regard, the acquiring party and the paymaster was the State Authority, notwithstanding any internal arrangement between the State Authority and TNB concerning the payment of the award. (paras 40 & 42)
- E (6) In the circumstances, question (i) was answered in the affirmative. Other than the Land Administrator, only a person who has properly objected to an award under s. 37 of the LAA is entitled to be a party to the land reference proceedings with the rights that entails. Question (ii) was answered in the negative as a paymaster is not so entitled as a matter of course. There was no necessity to answer question (iii) as the question ultimately hinged on TNB succeeding in these appeals in respect of questions (i) and (ii). The question of valuer's report was a matter that ultimately concerned the second respondent, the Land Administrator, in defending the award. (para 43)
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Bahasa Malaysia Headnotes

Keempat-empat rayuan oleh perayu ('TNB') bermula daripada dua prosiding rujukan tanah di Mahkamah Tinggi. Responden ('Unggul Tangkas') adalah pemilik berdaftar dua bidang tanah ('tanah berjadual') yang diambil untuk TNB menurut s. 3(1)(a) Akta Pengambilan Tanah 1960 ('APT'). Unggul Tangkas diawardkan RM12,593,196 ('award') sebagai pampasan penuh bagi kepentingannya dalam tanah berjadual itu, yang perlu dibayar oleh TNB. Tidak berpuas hati dengan award tersebut, Unggul Tangkas memfailkan bantahan kepada Pentadbir Tanah dalam Borang N dan memulakan dua prosiding rujukan tanah di Mahkamah Tinggi. TNB memfailkan permohonan bawah A. 15 k. 6 Kaedah-Kaedah Mahkamah 2012 ('KKM 2012') untuk kebenaran mencelah ('lampiran 7') dalam prosiding rujukan tanah dan untuk memfailkan laporan penilai dan laporan-laporan membantah yang relevan. Walau bagaimanapun, Unggul Tangkas menghujahkan bahawa TNB gagal mematuhi prosedur bantahan terhadap award seperti yang diperuntukkan bawah ss. 37(3) dan 38 APT dan permohonan untuk mencelah adalah penyalahgunaan proses mahkamah. Mahkamah Tinggi membenarkan lampiran 7 dan TNB dimasukkan sebagai pencelah/responden kedua dalam prosiding rujukan tanah. Walau bagaimanapun, TNB tidak dibenarkan memfailkan laporan-laporan penilaian dan bantahannya. Terkilan, Unggul Tangkas memfailkan dua rayuan ke Mahkamah Rayuan terhadap perintah membenarkan TNB mencelah, sementara TNB memfailkan dua rayuan terhadap keputusan Mahkamah Tinggi menafikannya kebenaran mengemukakan laporan-laporan penilaian dan bantahan. Mahkamah Rayuan memutuskan bahawa TNB tidak wajar dibenarkan mencelah dan dengan itu, isu pengemukakan laporan-laporan penilaian dan bantahan sepatutnya gagal. Usul TNB untuk kebenaran merayu dibenarkan atas persoalan undang-undang berikut: (i) sama ada pemfailan bantahan dalam Borang N berikutan s. 37 APT satu-satunya cara untuk pembayar menjadi pihak dalam prosiding rujukan tanah di Mahkamah Tinggi; (ii) sama ada pembayar mempunyai hak menjadi pihak dalam prosiding rujukan tanah di Mahkamah Tinggi untuk melindungi kepentingan sahnya di mana award pampasan yang dibuat oleh Pentadbir Tanah menjadi perkara yang dicabar di Mahkamah Tinggi; dan (iii) sama ada pembayar, selepas diberi kebenaran untuk mencelah dalam rujukan tanah, boleh dinafikan hak untuk menyertai dan memfailkan laporan penilaian jika perlu bawah Jadual Ketiga APT. Kes Unggul Tangkas adalah bahawa TNB tidak boleh membantah award tersebut kerana hanya seseorang yang mempunyai kepentingan yang telah membuat tuntutan pada Pentadbir Tanah dalam tempoh yang ditetapkan dan tidak menerima award Pentadbir Tanah yang boleh membuat bantahan.

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- A Diputuskan (menolak rayuan-rayuan TNB)
Oleh Zulkefli Ahmad Makinudin PMR menyampaikan penghakiman mahkamah:**
- B (1)** Peruntukan APT jelas bahawa memasukkan Borang N adalah penting jika sesuatu pihak ingin membantah award dalam prosiding rujukan tanah kerana ia bertujuan untuk penyelesaian segera bantahan terhadap award tersebut. Unggul Tangkas, yang terkilang dengan award yang diberikan sebagai pampasan bagi pengambilan tersebut, telah memfailkan bantahan dalam Borang N bawah APT dengan sewajarnya untuk mencabar jumlah pampasan. Semasa perbicaraan pengambilan tanah di hadapan Pentadbir Tanah, Unggul Tangkas dan TNB hadir.
- C** Walau bagaimanapun, TNB tidak dinamakan sebagai pihak dalam tindakan tersebut, dan kehadirannya bukan sebagai pencelah. TNB juga tidak mengemukakan apa-apa laporan penilaian berkaitan dengan tanah berjadual itu.
- D (2)** Seksyen 45(2) APT tidak membenarkan skop rangka kerja spesifik bawah APT diperluaskan untuk membantu tindakan TNB dalam lampiran 7 untuk mencelah dalam prosiding pengambilan tanah bawah A. 15 k. 6(2)(b) KKM. Seksyen 45(2) APT memperuntukkan peranan pelengkap KKM pada APT jika ia tidak bertentangan dengan peruntukan-peruntukan APT. Oleh itu A. 15 k. 6(2)(b) KKM, dalam konteks kes ini, tidak mempunyai aplikasi.
- E (3)** TNB tiada kepentingan undang-undang dalam prosiding rujukan tanah. Sebagai pembayar, paling tidak, TNB hanya mempunyai kepentingan kewangan. Keterangan menunjukkan bahawa TNB bukan pihak yang terkilang dengan award tersebut tetapi hanya bimbang bahawa keputusan prosiding rujukan tanah di Mahkamah Tinggi kemungkinan akan merugikan mereka. Pembelaan bagi award sepatutnya dikemukakan oleh Pentadbir Tanah dan Pentadbir Tanah berhak sepenuhnya untuk mengemukakan keterangan yang dikira perlu untuk berbuat demikian.
- F (4)** Mahkamah Tinggi betul apabila menafikan hak TNB mengemukakan apa-apa laporan penilaian dalam prosiding rujukan tanah kerana peluang TNB untuk mengemukakannya wujud semasa hadir dalam siasatan. Kepentingan TNB jelas dijaga oleh pasukan undang-undang yang mewakili Pentadbir Tanah dan dengan itu, apa-apa yang perlu dikemukakan untuk TNB telah dibuat oleh pasukan undang-undang tersebut. Proses yang sama boleh diulangi dalam prosiding rujukan tanah di hadapan Hakim Mahkamah Tinggi. Prosiding rujukan tanah tidak wajar dipanjangkan dan dilengahkan di Mahkamah Tinggi oleh prosiding interlokutori yang tidak perlu seperti permohonan untuk mencelah dalam lampiran 7 yang difailkan TNB.
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- (5) Tujuan pengambilan tanah berjadual itu oleh Pihak Berkuasa Negeri seperti yang diperuntukkan dalam s. 3(1) APT perlu dipertimbangkan dalam menentukan sama ada TNB boleh dibenarkan mencelah dan menjadi salah satu pihak di peringkat prosiding tanah di Mahkamah Tinggi. Tanah berjadual tersebut telah diambil bawah s. 3(1)(a) APT seperti yang jelas daripada Borang D yang dikeluarkan oleh Pihak Berkuasa Negeri menurut s. 7 APT. Oleh itu, tiada keperluan bagi pihak yang mengambil tanah mematuhi peruntukan-peruntukan ss. 3(3), 3(4), 3(5), 3(6), 3A dan 3F APT. Oleh itu, pihak yang mengambil tanah dan pembayar adalah Pihak Berkuasa Negeri, walau apa pun perundingan antara Pihak Berkuasa Negeri dan TNB berkaitan pembayaran award.
- (6) Dalam keadaan tersebut, soalan (i) dijawab secara afirmatif. Selain daripada Pentadbir Tanah, hanya seorang yang membantah award melalui cara yang betul bawah s. 37 APT berhak menjadi pihak dalam prosiding rujukan tanah dengan hak-hak yang terlibat. Soalan (ii) dijawab secara negatif kerana pembayar sememangnya tiada hak. Soalan (iii) tidak perlu dijawab kerana soalan tersebut pada asasnya bergantung pada kejayaan TNB dalam rayuan-rayuan berkaitan soalan (i) dan (ii). Persoalan tentang laporan penilaian adalah perkara yang pada asasnya berkaitan dengan responden kedua, Pentadbir Tanah, dalam membela award tersebut.

Case(s) referred to:

Cahaya Baru Development Bhd v. Lembaga Lebuhraya Malaysia [2010] 8 CLJ 761 FC (refd)

Collector of Land Revenue v. Alagappa Chettiar [1968] 1 LNS 31 PC (refd)

Damai Motor Kredit Sdn Bhd & Anor v. Kementerian Kerja Raya Malaysia [2015] 1 CLJ 44 CA (dist)

Ng Kam Loon & Ors v. Director of Public Works Department, Johor & Anor [1990] 1 LNS 23 HC (refd)

Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Inch Kenneth Kajang Rubber Ltd & Anor And Other Appeals [2011] 1 CLJ 95 CA (foll)

Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor [2009] 4 CLJ 57 CA (refd)

Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344 SC (refd)

Legislation referred to:

Land Acquisition Act 1960, ss. 2, 3(1)(a), (b), (c), (2), (3), (4), (5), (6), 3A, 3B, 3C, 3D, 3E, 3F, 7, 10, 11, 12, 37(3), 38, 43, 44(1), (2), 45(2), 49, 55(1)(b), Third Schedule

Rules of Court 2012, O. 15 r. 6(2)(b)

Rules of the High Court 1980, O. 15 r. 6(2)(b)

A *For the appellant - Cyrus Das, Steven Thiru, David Mathew, Mehala Marimuthoo & David Ng Yew Kiat; M/s Shook Lin & Bok*
For the 1st respondent - Malik Imtiaz, Lye Wing Voi, Yap Hsu-Lyn & Chan Wei June; M/s WV Lye & Partners
For the 2nd respondent - Ety Eliany Tesno; State Legal Advisor, Selangor

B *[Editor's note: For the Court of Appeal judgment, please see *Tenaga Nasional Bhd v. Unggul Tangkas Sdn Bhd & Anor And Other Appeals* [2017] 2 CLJ 185 (overruled in part); For the High Court judgment, please see [2016] 1 LNS 786 HC]*

Reported by S Barathi

C **JUDGMENT**

Zulkefli Ahmad Makinudin PCA:

Background Facts

D **[1]** These are four appeals filed by the appellant, Tenaga Nasional Berhad (“TNB”) before this court originating from two land reference proceedings in the High Court which were heard together. The respondent in these four appeals is Unggul Tangkas Sdn Bhd (“Unggul Tangkas”). Unggul Tangkas was the registered owner of two pieces of land (“scheduled land”) which were acquired for TNB pursuant to s. 3(1)(a) of the Land Acquisition Act 1960 (‘Act’). Unggul Tangkas was awarded RM12,593,196 (‘award’) as full compensation for its interest in the scheduled land, which was payable by TNB.

F **[2]** Dissatisfied with the award, Unggul Tangkas filed an objection in Form N to the Land Administrator and initiated two land reference proceedings before the High Court.

[3] TNB filed applications under O. 15 r. 6 of the Rules of Court 2012 (“ROC 2012”) for leave to intervene (“encl. 7”) in the land reference proceedings and to file the valuer’s report and the relevant rebuttal reports.

G **[4]** Unggul Tangkas contended that TNB failed to comply with the procedure for objection to the award as provided for under ss. 37(3) and 38 of the Act and the applications to intervene were an abuse of the court process.

H **In The High Court**

[5] The High Court allowed encl. 7 and TNB was added as the intervener/second respondent in the land reference proceedings. Nonetheless, TNB was not allowed to file its valuation and rebuttal reports. The High Court *inter alia* stated as follows:

I (i) As a paymaster, the Proposed Intervener has both legal and commercial interests in the decision of this Court on the land reference.

(ii) The Proposed Intervener has not filed any valuation report at the enquiry before the Land Administrator, thus the Court agrees with the submissions of the Landowner's counsel that it will be unfair for the Proposed Intervener to now be allowed to file its valuation report. Furthermore, it is pertinent to note that the Land Administrator's award was made based on the valuation reports before the Land Administrator.

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[6] Aggrieved by the decision, Unggul Tangkas filed two appeals to the Court of Appeal against the order allowing TNB to intervene, whereas TNB lodged two appeals against the decision of the High Court which refused to allow TNB to adduce the valuation and the rebuttal reports.

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In The Court Of Appeal

[7] The Court of Appeal held that TNB should not be allowed to intervene and thus the issue of adducing the valuation and the rebuttal reports shall fail. The Court of Appeal in its judgment, *inter alia*, observed as follows:

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Section 45 of the LA Act 1960 says *inter alia*, it does not allow for a *carte blanche* importation of the Rules of Court 2012 *in toto*. It only allows for the Rules of Court 2012 to be applied in appropriate circumstances. It does not make the application of all provisions in the Rules of Court 2012 to be applicable to proceedings emanating from the LA Act 1960. Our construction of s. 45 of the LA Act 1960 is that the Rules of Court 2012 is applicable as long as they do not run contrary to the provisions, in the context of the provisions of the LA Act 1960 itself. At the highest, its application to the LA Act 1960, if at all appropriate, it is complementary.

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... TNB was not a party that was entirely alien to the proceedings before the LA. It was present and its interest was clearly taken care of by the legal team of the land acquirer. Anything that needed to be said for TNB must have been taken up by the acquiring party. If TNB wanted a lower value be attached to the land, it must have indicated the same to the officer of the State Legal Adviser. In fact, the same process could be replicated during the land reference before the High Court Judge.

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... no intervention means the issue of putting in the valuation report as rebuttal report by TNB would not arise at all.

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Questions Of Law

[8] The Federal Court allowed the motion for leave to appeal by TNB on the following questions of law:

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1. Whether the filing of an objection *vide* Form N pursuant to Section 37 of the Land Acquisition Act 1960 is the only mode available for a paymaster to be a party in a land reference proceeding before the High Court?
2. Whether the paymaster has a right to be made a party in a land reference proceeding before the High Court to safeguard its legal interest where the award of compensation made by the Land Administrator is being subject to challenge at the High Court?

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- A 3. Whether the paymaster upon being given leave to intervene in the land reference can be denied the right to participate and file a valuer's report if necessary under the Third Schedule to the Land Acquisition Act 1960?

Submissions Of TNB (The Appellant)

- B [9] Learned counsel for TNB amongst others submitted as follows:

C It is the contention of TNB that the provisions of the Act safeguard the interests of all persons who may be affected by the award of compensation made by the Land Administrator at the inquiry stage and the outcome of any objection to the said award in the High Court. Section 11 of the Act requires the Land Administrator to notify any person whom he knows or has reason to believe to be interested in the land being acquired of the date of the inquiry for the hearing of compensation claims.

- D [10] In the present case, a representative of TNB attended the compensation inquiry carried out pursuant to s. 12 of the Act. Learned counsel for TNB submitted that TNB was rightly notified about the inquiry as the Land Administrator had acknowledged that TNB is a "person interested" within the meaning of the Act. Section 43 of the Act requires a notice to be served on the person or corporation on whose behalf the land was acquired directing his/its appearance before the High Court at the hearing of the objection in relation to the acquisition.

- E [11] Learned counsel for TNB referred to us the provision of s. 44(1) of the Act which provides that the scope of the High Court's inquiry in land reference proceedings is restricted to a consideration of the interests of persons affected by an objection made, while s. 44(2) of the Act requires the High Court to consider the interests of all persons interested, including those who have themselves not made an objection. It was submitted that this does not preclude the High Court from hearing and considering the interests of parties who have consented to the award without protest, as TNB did in this case. (See the case of *Ng Kam Loon & Ors. v. Director of Public Works Department, Johor & Anor* [1990] 1 LNS 23; [1990] 2 MLJ 229).

- F [12] It is the contention of TNB that an application to intervene pursuant to O. 15 r. 6(2)(b) ROC 2012 is the procedural step required for the person or corporation to appear and be heard as a party to the land reference proceedings as permitted by s. 55(1)(b) of the Act. In this connection, s. 49 of the Act gives "any person interested" and "any person or corporation on whose behalf the proceedings were instituted pursuant to s. 3" the right to appeal from a decision of the High Court. Thus, without being added as an intervener/party, "any person interested" and "any person or corporation on whose behalf the proceedings were instituted pursuant to s. 3" will not have the avenue to appeal in a land reference proceedings.

[13] It is the contention of TNB that the Court of Appeal failed to take into account the provisions in ss. 43, 44 and 55 of the Act which recognise the right of parties such as the paymaster who is interested in the acquired land and may be affected by the outcome of any objection to the Land Administrator's award in the High Court to be heard as a party in the land reference proceedings in order to safeguard its interest.

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[14] It was submitted for TNB that it would be quite meaningless for TNB, as the paymaster, to have been allowed to participate at the inquiry stage before the Land Administrator but not before the High Court at the land reference proceedings where the final decision on the quantum of compensation is to be made.

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[15] As regards the application of ROC 2012 it was submitted for TNB that our courts have recognised that an intervener's application pursuant to O. 15 r. 6(2) ROC 2012 can be made in land reference proceedings. (See the cases of *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor* [2009] 4 CLJ 57 and *Damai Motor Kredit Sdn Bhd & Anor v. Kementerian Kerja Raya Malaysia* [2015] 1 CLJ 44).

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Submissions Of Unggul Tangkas (The Respondent)

[16] Learned counsel for Unggul Tangkas amongst others submitted as follows:

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TNB had elected not to participate in the enquiry before the Land Administrator. Its representatives were present but as passive observers. It had not been issued with a form E.

[17] It was also submitted for Unggul Tangkas that TNB had not lodged Form N in objection to the award. Therefore, it did not dispute the award.

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[18] Learned counsel for Unggul Tangkas contended that TNB's basis for filing encl. 7 is that it was merely concerned that the amount of the award might be increased in favour of Unggul Tangkas, an outcome it did not support.

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[19] Learned counsel for Unggul Tangkas impressed upon us that the Act puts in place a legal framework directed at the expeditious determination of the quantum of compensation payable by reason of the acquisition of land by a State Authority.

[20] It was submitted for Unggul Tangkas that under s. 3(1) of the Act, the acquisition of land by the State Authority can be made under any one of the three purposes contemplated under the said subsection. Where the land is to be acquired for purposes under s. 3(1)(b) and/or 3(1)(c), s. 3(2) and 3(3) of the Act contemplate an application being made to the land administrator in the prescribed format and the need to comply with the requirements as spelt out under s. 3(4), 3(5), 3(6) as well as ss. 3A to 3F of the Act.

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A [21] For the present case, the land was acquired under s. 3(1)(a) of the Act. No such application as envisaged by s. 3(2) and 3(3) of the Act was needed as the acquisition was driven by the State Authority itself. This was evident from Form D issued by the State Authority pursuant to s. 7 of the Act. In the circumstances of this case, it is the contention of Unggul Tangkas that the conclusion that can be drawn is that the acquiring party and the paymaster is the State Authority.

B [22] Learned counsel for Unggul Tangkas submitted that given the streamlined procedure set out under the Third Schedule of the Act, unless the recipient is the applicant or the respondent, other persons are not to be treated as parties. They are heard to the extent necessary as determined by the High Court.

C [23] It was also submitted for Unggul Tangkas of the importance of the issuance of Form E under the Act. The Land Administrator commences acquisition proceedings by giving public notice in Form E pursuant to s. 10 of the Act read with s. 11 of the Act. Form E is served upon the occupier of the land, the registered proprietor of such land, and where he is not the occupier thereof, any person having a registered interest in such land and/or any person whom the Land Administrator knows or has reason to believe to be interested therein.

D [24] It is the contention of Unggul Tangkas that the Land Administrator has a wide discretion to issue a Form E, and this could include persons who, to the knowledge of the Land Administrator, have a financial interest in the acquisition exercise. (See the case of *Cahaya Baru Development Bhd v. Lembaga Lebuhraya Malaysia* [2010] 8 CLJ 761).

E [25] In the case at hand, a Form E was not issued to TNB. Moreover, TNB did not lodge a Form N, nor did it seek to do so. It is Unggul Tangkas' case that TNB cannot reject to the award as only an interested person who has made a claim to the Land Administrator in due time and who has not accepted the Land Administrator's award may make an objection.

F [26] As regards the application in encl. 7 for TNB to intervene as a party to the land reference proceedings under O. 15 r. 6(2)(b) of ROC 2012, it is the submission of Unggul Tangkas that it has no application in the context of the present case. Section 45(2) of the Act is of no assistance. It only provides that ROC 2012 is to play a role where there is any inconsistency with anything contained in the Act. There is no inconsistency that can be shown in this case.

Decision Of This Court

G [27] At the outset, we have to state here that the High Court proceedings in the present case were concerned with the appeal by the owner of the scheduled land, Unggul Tangkas against the amount of the award that was given to it as compensation for the scheduled land that was acquired by the

State Authority for the benefit of TNB. Enclosure 7 was an application by TNB to be granted leave to intervene in the High Court proceedings under O. 15 r. 6(2)(b) of ROC 2012. The Court of Appeal was right in stating that it was Unggul Tangkas being the owner who was the party aggrieved by the award that was handed down as compensation for the acquisition. Unggul Tangkas had duly filed its objection in Form N under the Act in order to challenge the amount of the said compensation.

[28] We noted that the undisputed facts in the present case showed that during the land acquisition hearing before the Land Administrator, the landowner, Unggul Tangkas, was present. TNB was also present. It was also not disputed that during the course of the acquisition hearing, TNB was not named as a party thereto. Neither was it present there as an intervener. Neither did it present any valuation report pertaining to the scheduled land that was the subject matter of the acquisition exercise.

[29] We are of the view the provisions of the Act made it clear that the lodging of form N is essential if a party seeks to object to an award in land reference proceedings as it is aimed at an expeditious resolution of the objection to the award.

[30] As regards TNB's application in encl. 7 to intervene in the acquisition proceedings under O. 15 r. 6(2)(b) of the ROC 2012, we agree with the submission of learned counsel for Unggul Tangkas that s. 45(2) of the Act does not lend assistance to TNB's cause of action. Section 45(2) of the Act does not allow for an enlargement of the scope of the specific framework under the Act. Section 45(2) of the Act provides as follows:

Save in so far as they may be inconsistent with anything contained in this Act the law for the time being in force relating to civil procedure shall apply to all proceedings before the court under this Act.

[31] We are of the view that s. 45(2) of the Act only provides for the complementary role of ROC 2012 to the Act if it does not run contrary to the provisions of the Act. Order 15 r. 6(2)(b) of ROC 2012 in the context of the present case does not have any application. On this point, we cite with approval the observation made by His Lordship KN Segara JCA in the case of *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Inch Kenneth Kajang Rubber Ltd & Anor And Other Appeals* [2011] 1 CLJ 95 as follows:

In the overall scheme and context of the Land Acquisition Act, any application by the appellant under O. 15 r. 6(2)(b) RHC 1980 to be made a party, is inappropriate. It would amount to an abuse of the process of the court and an attempt to circumvent the clear and unambiguous provisions of the LAA 1960 as regards to the manner and circumstances in which 'persons interested' under the LAA 1960 are to participate in proceedings either before the Land Administrator at an enquiry or, in court, upon a reference by the Land Administrator upon any objection to an Award. Filing of Form N is the most appropriate and the only mode

A available under the LAA 1960 to any person interested under the LAA
1960 to become a party in a Land Reference at the High Court relating
to an objection to the amount of compensation.

[32] Learned counsel for TNB referred to us the Court of Appeal case of
Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn
B *Bhd & Anor* [2009] 4 CLJ 57 to support his contention that our courts have
recognised an intervener’s application pursuant to O. 15 r. 6(2)(b) of ROC
2012 can be made in land reference proceedings. This case of *Sistem*
C *Penyuraian Trafik KL Barat Sdn Bhd* was decided earlier than the Court of
Appeal case of *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd*. The case of *Sistem*
D *Penyuraian Trafik KL Barat Sdn Bhd* was a split decision wherein the majority
was of the view that O. 15 r. 6(2)(b) of the RHC 1980 was applicable in
consideration whether SPRINT as an “interested party” could be rightly
added in the land reference proceedings. It would appear that there was a
conflict between these two decisions of the Court of Appeal on the issue of
intervention by a party in land reference proceedings before the panel of the
Court of Appeal in the present case.

[33] On a careful examination of the above two conflicting decisions of the
Court of Appeal cases, we are of the view that the decision in the case of
Sistem Lingkaran Lebuhraya Kajang Sdn Bhd which was followed by the Court
E of Appeal in the present case was correctly decided on this issue. The court
in *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd* had considered the totality of
the circumstances of the case in the light of the scheme of the Act and the
kind of special regime it has created, such that O. 15 r. 6(2)(b) of ROC 2012
is not applicable for the purpose of making a party either a co-respondent or
an intervener. We fully endorse the views expressed and the decision arrived
F at in the case of *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd*.

[34] As regards the case of *Damai Motor Credit Sdn Bhd & Anor*
v. Kementerian Kerja Raya Malaysia [2015] 1 CLJ 44 relied on by TNB on the
application of O. 15 r. 6(2)(b) of ROC 2012 to acquisition proceedings, we
G are of the view the factual matrix of the said case is distinguishable from the
present case. In the *Damai Motor Kredit* case, the appellant/landowner whose
land had been acquired under the Act was not informed and named as a party
in the originating summons (“OS”) filed by the respondent (Kementerian
Kerja Raya Malaysia) in the OS application for extension of time to file Form
N to the Land Administrator who had awarded a sum of award which was
H subsequently objected to by the respondent. The appellants did not know
about the OS and were never served with the application. They only became
aware of the OS after the application for an extension of time to file
Form N with the Land Administrator was granted. They subsequently filed
I in the High Court a summons-in-chambers (the SIC) for leave to intervene
in the action by the respondent and to set aside the court order granting the
respondent the OS.

[35] The High Court dismissed the SIC which led to the appeal by the appellants to the Court of Appeal. The Court of Appeal allowed the appellants' appeal and *inter alia* held that clearly the appellants in the *Damai Motor Kredit* case were persons interested who were within the contemplation of s. 2 of the Act. The position of the appellants/landowner in the *Damai Motor Kredit* case was clearly made out, where their interests were at stake as landowners. The question of them applying to be made interveners did not arise at all. They were the original parties in the proceedings before the Land Administrator. As such, they ought to be named in the OS proceedings by the respondent.

[36] We are of the view the Court of Appeal in the *Damai Motor Kredit* had rightly ruled that the learned High Court Judge was in error when he denied the appellants' application to be made interveners. With respect, however, the same cannot be said of TNB in our instant appeal. As was alluded to in the preceding paragraphs of this judgment, the factual matrix of the present case would not warrant a similar treatment for TNB.

[37] It is our judgment that TNB had no legal interest in the land reference proceedings. TNB being the paymaster, it had at the highest only a pecuniary interest. (See the case of *Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd* [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344). The evidence in the present case showed that TNB was not aggrieved by the award but was merely apprehensive that the outcome of the land reference proceedings in the High Court may adversely affect its pocket. At any rate, TNB's rights on whose behalf acquisition proceedings were instituted (see s. 43 of the Act) and whose interests must be considered by the court whether they have objected or not (see s. 44(2) of the Act) without the need for intervention.

[38] We are of the view that it was for the Land Administrator to defend the award and, as declared by the Privy Council in the case of *Collector of Land Revenue v. Alagappa Chettiar* [1968] 1 LNS 31; [1971] 1 MLJ 43, the Land Administrator was fully entitled to lead such evidence as he considered necessary to do so.

[39] In the present case, we take the view that the High Court was correct to deny TNB's right to tender any valuer's report in the land reference proceedings as every opportunity to tender the same was available to TNB who was present during the enquiry. We agree with the views expressed by the Court of Appeal in the present case that the interest of TNB was clearly taken care by the legal team representing the Land Administrator. Anything that needed to be submitted for TNB must have been taken up by the legal team. We would add here that the same process could be replicated during the land reference proceedings before the High Court Judge. Land reference proceedings should not be protracted and delayed in the High Court by unnecessary interlocutory proceeding such as an application to intervene in encl. 7 filed by TNB.

A [40] We are also of the view that the purposes of the acquisition of the scheduled land by the State Authority as spelt out under s. 3(1) of the Act need to be considered in determining whether TNB could be allowed to intervene and become a party at the stage of the land reference proceedings in the High Court. Section 3(1) of the Act provides as follows:

- B 3(1) The State Authority may acquire any land which is needed:
- (a) for any public purpose;
 - (b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or
 - (c) for the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purposes.

D [41] It should be noted that where the land is to be acquired for purposes under s. 3(1)(b) and/or s. 3(1)(c) of the Act, s. 3(2) and 3(3) of the Act require an application being made to the Land Administrator in the prescribed format. Under s. 3(4) of the Act, this application is then transmitted to the relevant authority for determination. The remaining s. 3(5) and 3(6) of the Act as well as ss. 3A to 3F of the Act provide further for the manner in which such applications are to be dealt with. It is our considered view that if the purpose of the acquisition of the land had been under ss. 3(1)(b) and/or 3(1)(c) of the Act, then it can be said the acquiring party and the paymaster is TNB.

F [42] For the present case, we found that the scheduled land was acquired under s. 3(1)(a) of the Act. This is evident from Form D issued by the State Authority pursuant to s. 7 of the Act. There was therefore no requirement for the acquiring party to comply with the provisions of ss. 3(3), 3(4), 3(5), 3(6), 3A and 3F of the Act unlike if the scheduled land were to be acquired under s. 3(1)(b) or 3(1)(c) of the Act. In this regard, we agree with the contention of Unggul Tangkas that the acquiring party and the paymaster is in fact the State Authority. This is notwithstanding any internal arrangement between the State Authority and TNB concerning the payment of the award.

H [43] For the reasons above-stated, we would answer question 1 posed in these appeals in the affirmative. Other than the Land Administrator, only a person who has properly objected to an award under s. 37 of the Act is entitled to be a party to the land reference proceedings with all the rights that entails. Question 2 should be answered in the negative. A paymaster is not so entitled as a matter of course. Question 3 ultimately hinges on TNB succeeding in these appeals in respect of questions 1 and 2. Therefore, there

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is no necessity for us to answer question 3. In any event, the question of valuer's report is a matter that ultimately concerns the second respondent (the Land Administrator) in defending the award.

[44] The appeals by TNB are therefore dismissed with costs.

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