IN THE COURT OF APPEAL AT PUTRAJAYA

APPEAL NO: B-02(IM)-119-04/2016

BETWEEN

TENAGA NASIONAL BERHAD … APPELLANT

AND

1. **UNGGUL TANGKAS SDN BHD**
2. **PENTADBIR TANAH,**

PEJABAT TANAH & DAERAH GOMBAK … RESPONDENT

Heard together with

IN THE COURT OF APPEAL AT PUTRAJAYA

APPEAL NO: B-02(IM)-120-04/2016

BETWEEN

TENAGA NASIONAL BERHAD … APPELLANT

AND

[1] UNGGUL TANGKAS SDN BHD

[2] PENTADBIR TANAH,

PEJABAT TANAH & DAERAH GOMBAK … RESPONDENT

Heard together with

IN THE COURT OF APPEAL AT PUTRAJAYA

APPEAL NO: B-02(IM)-757-04/2016

BETWEEN

UNGGUL TANGKAS SDN BHD … APPELLANT

AND

TENAGA NASIONAL BERHAD … RESPONDENT

Heard together with

IN THE COURT OF APPEAL AT PUTRAJAYA

APPEAL NO: B-02(IM)-758-04/2016

BETWEEN

UNGGUL TANGKAS SDN BHD … APPELLANT

AND

TENAGA NASIONAL BERHAD … RESPONDENT

[In the matter of High Court Malaya at Shah Alam

Civil Suit No. 15-83-09/2015

Between

Unggul Tangkas Sdn Bhd … Plaintiff

And

Pentadbir Tanah Pejabat Tanah dan

Daerah Gombak … Defendants

And

Tenaga Nasional Berhad … Intervener

CORAM:

ABANG ISKANDAR BIN ABANG HASHIM, JCA

ZAMANI BIN A. RAHIM, JCA

ZALEHA BINTI YUSOF, JCA

JUDGMENT OF THE COURT

Brief facts of the case

[1] Unggul Tangkas Sdn Bhd, ("the Applicant/ Land owner") is the registered owner of 2 pieces of the land identified as Lot PT 9011, HSD 80906 ("Lot 9011") and Lot PT 9012, HSD 80907, ("Lot 9012"), Mukim Bandar Rawang, Daerah Gombak, Selangor measuring 3.4692 hectares ("the scheduled land").

[2] The scheduled land was acquired by Pentadbir Tanah, Pejabat Tanah dan Daerah Gombak ("the Respondent") for Tenaga Nasional Berhad ("TNB"), the Intended Intervener pursuant to S. 3(1)(a) of the Land Acquisition Act 1960 ("the LA Act 1960") for the purposes of upgrading TNB's transmission line 33KV to 275KV from PMU Bukit Tarik to PMU Chubadak (Central Area Reinforcement Project) ("CAR").

[3] On 1 June 2015, the Applicant/ Land owner was awarded RM12, 593, 196. 00 as full compensation for its interest in the scheduled land, which was payable by TNB.

[4] Dissatisfied with the amount of compensation, the Applicant/ Land owner filed an objection in Form N to the Respondent. The matter was then referred to the High Court. For Lot 9011, it was registered under Land Reference No 15- 83-09/2015 ("LR 83") while for Lot 9012, it was registered under Land Reference No 15- 85-09/2015 ("LR 85").

[5] Being an interested party in the acquisition of the scheduled land, TNB filed an application for leave to intervene (Enclosure 7) in the land reference proceedings, for each case (LR 83 and LR 85), for it to be added as the Intervener/ 2nd Respondent in both cases. The applications were heard together in the High Court.

[6] Objecting the applications, the Applicant/ Land owner averred that TNB had failed to comply with the procedure for objection to the amount of the award as allowed for under S. 37(3) and S.38 of the LA Act 1960.

[7] According to the Applicant/ Land owner, TNB had failed to make a written application in Form N to the Land Administrator, thus making the application to intervene an abuse of Court process. Besides, at no material time did TNB submit any valuation reports nor had they taken part in the proceedings before the Land Administrator ("the LA").

[8] On 28 March 2016, the learned High Court Judge allowed Enclosure 7 i.e. TNB's applications for leave to intervene in both LR 83 and 85, to be added as the Intervener/ 2nd Respondent in both cases. However, TNB was not allowed to file its valuation report and Rebuttal Report.

The Appeals

[9] Aggrieved by the said decision, both parties, the Applicant/ Land owner and TNB appealed against it to the Court of Appeal.

[10] TNB's appeal against the decision of not allowing it to file its valuation report and Rebuttal Report for LR 83 is vide Appeal B-01(IM)-119-04/2016 ("Appeal 119") while for LR 85 is vide Appeal B-01(IM)-120-04/2016 ("Appeal 120").

[11] The Applicant/ Land owner appealed against the decision of the High Court in allowing TNB to intervene in the Land Reference proceedings. For LR 83, its appeal is vide Appeal B-01(IM)-757-04/2016 ("Appeal 757"), while for LR 85 its appeal is vide Appeal B-01(IM)-758-04/2016 ("Appeal 758").

[12] All these 4 appeals were fixed for hearing before us, however parties agreed for Appeal nos. 757 and 758 to be heard first as the outcome of these two appeals would impact significantly on the Appeal nos. 119 and 120. Premised on that mutual understanding between the parties, we had proceeded to hear submissions by both parties in respect of Appeal nos. 757 and 758 and reserved the other 2 appeals until Appeal nos. 757 and 758 on leave to intervene granted to TNB are resolved.

Issues Raised by Parties

[13] In its submissions, the Applicant/ Land owner had raised the following issues:

a. Whether TNB ought to have been allowed to intervene notwithstanding that it has failed to participate in the proceedings before the LA, and that it never lodged an objection in Form N with the High Court pursuant to section 37(1) and 38(1) of the LA Act 1960; and

b. If so, whether TNB ought to be allowed to file a valuation report for the purpose of the Land Reference proceedings despite it not having put any report before the LA. But this issue pertaining to

the valuation report by TNB must be reserved for mature submissions by both parties, only if the learned High Court judge was correct in allowing TNB to intervene as prayed for in Enclosure 7.

[14] On the other hand, TNB raised the issue of whether, upon the Applicant/ Land owner filing the notice of objection in Form N (per ss. 37(1) and 38(1) of the LA Act 1960) in respect of the quantum of compensation awarded by the LA to it and the LA referring the matter to the High Court, TNB can intervene in the Land Reference proceedings in the High Court as it was the "paymaster" and as a "person interested", thus it ought to be heard in order to safeguard its interest in the matter.

Salient features from the facts

[15] We believe that we should begin by looking at Enclosure 7 itself for in it lays the genesis of this matter. Enclosure 7 has been the application by the TNB to be granted leave to intervene in the High Court proceedings. Those High Court proceedings were concerned with the appeal by the Applicant/ Land owner against the amount of the award that was given to it as compensation for its lands that were acquired by the State Authority for the benefit of TNB.

[16] Essentially, it was the Applicant/ Land owner who was aggrieved by the award that was handed down as compensation for the acquisition. As a result thereof, it had filed in Form N under the Act in order to challenge the amount of the said compensation.

[17] The undisputed facts had also shown that during the land acquisition hearing before the LA, the land acquirer was present. So was the Land owner [now the Applicant]. TNB was also present. This was evidenced by the presence of its officers whose names appeared in the record of attendance during the said proceedings. It was also not disputed that during the course of the acquiring 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 said land that was then the subject matter of the acquisition exercise. Apparently, it was present because it would be the beneficiary of the acquired land. Indeed, the subject land was acquired by Pentadbir Tanah, Pejabat Tanah dan Daerah, Daerah Gombak, for TNB for the purpose of upgrading TNB's transmission line 33KV to 275KV from PMU Bukit Tarik to PMU Chubadak, the so-called Central Area Reinforcement Project or "CAR". At the end of the hearing exercise, an award in the sum of RM12, 593, 196. 00 was handed down to the Land owner. It was much aggrieved by the award of compensation for his land and it had since

filed his Notice N as required of it under the LA Act 1960, as it was desirous of challenging that award. It had since become the Appellant before the High Court pertaining to the awards of compensation.

[18] But TNB was actually satisfied with the said amount of compensation which it had to pay as the paymaster. The acquirer too was satisfied with the award that was handed down. There was therefore no filing of Form N by either TNB or the acquirer. However, TNB was desirous of being made an intervenor during the High Court hearing. The reason being that it was minded of defending the award, lest the High Court may increase the amount of the compensation for the acquired land. Can it do that?

[19] It is noted that TNB had founded its application in Enclosure 7 under Order 15 rule 6 of the Rules of Court 2012 [‘the ROC 2012’]. Order 15 rule 6 of the ROC 2012 pertains to right to intervene in any on-going proceedings before the Court.

[20] For ease of convenience, we reproduce Order 15 rule 6 of the ROC 2012. It reads as follows:

> “6. Misjoinder and non-joinder of parties (O. 15, r. 6(2)(b))

(1) …

(2) Subject to this rule, at any stage of the proceedings in any cause or matter, the Court may on such terms as it thinks just and either of its own motion or on application-

(a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;

(b) order any of the following persons to be added as a party, namely-

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which, in the opinion of the Court, would be just and convenient to

determine as between him and that party as well as between the parties to the cause or matter.

[21] Learned counsel for TNB had submitted that Order 15 of the ROC 2012 ought to be applicable. It was submitted that TNB had a legal interest in the matter. He had cited to us that section 45 of the LA Act 1960 is the authority for the proposition that the Order 15 of the ROC 2012 ought to be applicable. We reproduce section 45 which 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."

[22] With respect, we agree with learned counsel for the Applicant/ Land owner that Section 45(2) of the LA Act 1960 does not lend assistance to TNB's cause. Section 45 of the LA Act 1960 says inter alia, it says, 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 section 45 of the

LA Act 1960 is that the Rules of Courts 2012 are 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.

[22] The learned counsel for the Applicant/ Land owner had cited before us the case of **Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Inch Kenneth Kajang Rubber Ltd & Anor Other Appeals** [2011] 1 CLJ 95 ("**SILK** case"), where learned Justice K. N. Segara JCA had occasion to say:

> "[16] In the over-all 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 by the Land Administrator upon any objection to an Award. Filing of

Form N is the most appropriate and the only mode 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."

[23] Having considered the authorities, we find no cogent reason to depart from the acute observations made by this bench in the **SILK** case [supra]. We agree with learned Justice K. N. Segara's conclusions made therein pertaining to the right to intervene by persons in the position of the eventual paymaster, just like TNB in the present appeal immediately before us. We noted the submissions by learned counsel for TNB on the general principles pertaining to the application of Order 15 Rule 6 of the Rules of Court 2012 on intervenor application to be made a party in an on-going court proceeding. Indeed, the observation made by Lord Denning MR in the English Court of Appeal case of **Gurtner v Circuit** [1968] 1 All ER 328 has been highly instructive. But to every general rule there are always exceptions. To our mind, one such exception has been well articulated by learned Justice K. N. Segara JCA in the **SILK** case [supra]. In that regard, therefore, we are constrained to agree that the general principles applicable to intervention applications as laid down in

Pegang Mining Co Ltd v. Choong Sam & Ors [1969] 2 MLJ 52 have no bearing in the circumstances of this case.

[24] Even if we were wrong in saying that Order 15 of the ROC 2012 was not applicable in a Land Reference proceedings, we are of the view that TNB did not have legal interest and merely being the paymaster does not confer it with that enabling criterion. At the highest, it only has a pecuniary interest. That in itself does not equate a legal interest. That legal interest must also be direct. In the Supreme Court case of **Tohtonku Sdn Bhd v Superace (M) Sdn Bhd** [1992] 2 CLJ learned apex Court justices had referred to Lord Diplock's speech in the Privy Council case of **Pegang Mining Company Ltd** [supra] in order to see whether the party's interest in the matter **are either 'legal' or merely 'commercial'** and quoted the learned Law Lords as to the test to be applied thereto, as follows:

> **"**A better way of expressing the test is: will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in the action?"

[25] In this case, the TNB was for all intent and purposes a beneficiary of the acquired land to be utilised for the purpose for which it was

acquired. We do not see how it could be said that it had a direct legal interest. The records of proceedings before the LA showed that it was never a party in the said proceedings. Rather, it was present together with the legal team of the acquiring party, which was represented by the State Legal Advisor's officers. There was nothing on record to show that TNB was present as *amicus curiae* to assist the LA when so invited. Neither had the record shown that TNB had tendered any valuation report pertaining to the said land. It was not indicated that the valuation report tendered by the acquiring party was supplied by TNB. But what was clear was that TNB was **not aggrieved** by the amount of compensation that was awarded to the Applicant/ Land owner. It was not an aggrieved party by the award. It was only **apprehensive** that the result of the Land Reference before the learned High Court judge might adversely tamper with the award handed down by the LA ultimately by increasing the award sum in favour of the Applicant/ Land owner.

[26] On account of that and that alone, TNB had put in Enclosure 7 in order that it be heard. The fact that it may adversely affect its pocket is not denied. But here, it must be noted that 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. Looking at the order made by the learned High Court Judge in both enclosures under appeal before us, what was apparent was that while he allowed TNB to intervene, he denied it the right to tender any valuation report. What that seems to suggest, on the face of it must be that TNB was allowed to partake in the submissions based on the available evidence, but it was not allowed to tender fresh valuation report on the land or any Rebuttal Report.

[27] Again we would respectfully refer to the judgment of learned Justice K. N. Segara JCA in the **SILK** case [supra] where he had said as follows:

> "[17] The Land Reference proceedings in this case before the High Court is essentially an enquiry to determine the fair compensation payable to the owner of the land who is dissatisfied with the Award of the Land Administrator as being low. Every opportunity was available to the appellant to have participated in the enquiry before the Land Administrator if it had asserted its rights to do so as being the eventual paymaster of any compensation awarded to the

land owner. It is for the Land Administrator and/or his valuer, to file his valuation report at the Land Reference proceedings in the High Court pursuant to the 3rd Schedule to support his Award. It is neither open nor desirable for the appellant to file any valuation report to support the Award of the Land Administrator in the High Court. However, if the appellant had filed any valuation report in any enquiry before the Land Administrator the report would form part of the records before the High Court. Land Reference proceedings should not be protracted and delayed in the High Court by unnecessary interlocutory proceedings such as the present application by the appellant to intervene. Land Reference cases should be expeditiously disposed off in the High Court by strictly adhering to the evidence and procedure set out in the Third Schedule. **Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor** [2009] 4 CLJ 57 and **Lembaga Lebuhraya Malaysia v. Cahaya Baru Development Bhd** [2010] 4 CLJ 419 can be easily distinguished on the facts vide to the present appellant's application in the High Court."

[28] Indeed, on the issue of TNB being desirous of defending the award, learned Justice K. N. Segara JCA, referred to what was said by Lord Diplock in **Collector of Land Revenue v. Alagappa Chettiar** [1971] 1 MLJ 43, at page 44:

> "The onus lies upon the applicant to satisfy the Court by evidence that the amount of compensation awarded is inadequate; and the collector is entitled to call evidence in support of the amount awarded. His evidence is not confined to supporting the award upon the grounds stated in the notice of reference. He may amplify them or justify the amount awarded on other grounds. The Judge, with the assistance of the advice proffered to him by the assessors, makes his own estimate of the amount of compensation upon the evidence adduced before him; but if at the conclusion of the evidence he is not satisfied that the amount awarded by the collector is inadequate, the award must be upheld and the application dismissed."

[29] Premised on the above considerations, we are with the Applicant/ Land owner that Enclosure 7 ought not to have been allowed by the learned High Court Judge. To recap, the scheme of things as expressly stipulated in the Third Schedule of the Act, clearly points to the

conclusion that the Land Reference before the High Court is specifically crafted and drafted in such a manner that only specified parties are allowed to participate in the proceedings. The panel in the **SILK** case [supra] through the speech of learned Justice K. N. Segara JCA had identified who these parties are and a person in the shoes of TNB is not a party who is within the contemplation of Parliament as a party who could be heard in the Land Reference Proceedings, as an intervenor or as a co-respondent in the circumstances of this case. TNB ought to have filed in Form N of the LA Act 1960 if it was desirous of being heard in the Land Reference Proceedings in the High Court if it was not happy with the amount of compensation awarded to the Land owner. To that extent, we agree that Order 15 of the ROC 2012 had no application in this situation.

[30] Even if Order 15 of the ROC 2012 were applicable in the scheme of things within the specific framework that is the LA Act 1960, we are not convinced that TNB was for all intents and purposes a person envisaged to have a direct interest in the matter. At its highest, TNB merely had, as a paymaster, a pecuniary interest. It therefore had failed to meet the threshold requirement of it having met the critical element of a direct ‘interest’, as required under Order 15 of the ROC 2012.

[31] Having considered the totality of the Records of Appeal, we cannot but surmise that the application to intervene by TNB was made in abundance of caution. There is nothing to stop TNB to advise the State Legal Officers accordingly on the matter pertaining to the amount of the award of compensation in the course of the Land Reference proceedings in the High Court.

[32] We noted that the unanimous decision of this Court in the case of **SILK** [supra] was not appealed against. Neither was it referred to in the **Damai Motor Kredit Sdn Bhd & Anor v Kementerian Kerja Raya Malaysia** [2015] 1 CLJ 44 a case cited in support by the learned counsel for the TNB. We will revert to that case and express our view on it shortly.

[33] For the present, it did not escape our attention that the learned counsel for the TNB had also cited the case of **Sistem Penyuraian Trafik KL Barat Sdn Bhd v Kenny Heights Development Sdn Bhd** [2009] 4 CLJ 57. That decision was a split decision of this Court whereby the majority was of the view that O.15 r.6(2)(b) of the RHC 1980 was applicable in considering whether SPRINT as an 'interested party' could be rightly added in the land reference proceedings. Subsequent to that decision, the **SILK** case [supra] was decided, where

the decision anchored on the learned Justice K.N. Segara's speech, was a unanimous one. The factual matrix, in material particular, in the **SILK** case [supra] was very similar to this instant case before us now. This unanimous decision has been referred to and dealt with by us rather extensively in the foregoing paragraphs of this judgment. Therefore, there appears to be a conflict between the 2 decisions of this Court on the matter of intervention.

[34] So, what are we to do? Following the principles as laid down in the case of **Young v Bristol Aeroplane Co ltd** [1944] KB 718, the Court of Appeal is bound by its own decision unless there exist cogent reason or reasons for it to depart from its earlier decisions. When faced with a situation where there exist 2 conflicting decisions on the same issue, this Court has a choice to choose which of the conflicting decisions to follow. When delivering the judgment of the English Court of Appeal in the **Young v Bristol Aeroplane** case [supra], Lord Greene M.R had held:

> "On a careful examination of the whole matter we have come to the clear conclusion that this court is bound to follow previous decisions of its own as well as those of courts of co-ordinate jurisdiction. The only exceptions to this rule (two of them apparent only) are those already mentioned which for

convenience we here summarize: (1.) The court is entitled and bound to decide which of two conflicting decisions of its own it will follow. (2.) The court is bound to refuse to follow a decision of its own which, though not expressly overruled, cannot, in its opinion, stand with a decision of the House of Lords. (3.) The court is not bound to follow a decision of its own if it is satisfied that the decision was given *per incuriam*."

[35] In regard to this matter, we are of the considered view that this Court in the **SILK** case [supra] had considered the totality of the circumstances in light of the LA Act 1960 and the kind of special regime that it has created, such that Order 15. R. 6 ROC 2012 was not applicable for the purpose of making a party either as a co-respondent or as an intervener.

[36] As regards the case of **Damai Motor Kredit** [supra] the factual matrix was quite easily distinguishable, in that in **Damai Motor Kredit** case [supra] the Appellants/land owner whose land had been acquired under the LA Act 1960 was not informed and named as a party in the Originating Summons ("OS") filed by the Respondent Kementerian Kerja

Raya Malaysia in its OS application for extension of time to file Form N to the LA who had awarded a sum of award which was 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 LA was granted. They subsequently filed 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. The High Court dismissed the SIC which led to the appeal by the Appellants to the Court of Appeal. In the Court of Appeal, Abdul Aziz JCA on behalf of the Court held at paragraphs 17 and 18 that:

> "**[17]** … the appellants do have a genuine and direct legal interest in the matter and that interest would definitely be affected by any order or judgment that might be made in the action particularly if the order or judgment resulted in the reduction of the amount of compensation awarded to the appellants, and which had been formalised by the issuance and acceptance of Form H, by the Land Administrator. This 'direct legal interest' test had been formulated and approved by the Supreme Court in ***Tohtonku Sdn Bhd v. Superace***

(M) Sdn Bhd *[1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344*; [1992] 2 MLJ 63.

[18] The appellants are also 'person interested' as defined by s. 2 of the Act. The meaning assigned to the expression 'person interested' by s. 2 of the Act 'includes every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include a tenant at will.' Clearly therefore the appellants fall within that definition or meaning of 'person interested'. As mentioned earlier, the first appellant was the registered proprietor of the land involved in the acquisition and the second appellant was the developer to develop the land under a joint venture agreement with the first appellant. Moreover the inquiry as to the amount of compensation payable for the acquisition had been completed by the relevant Land Administrator and the award of compensation had been made by the Land Administrator and accepted by the appellants. In the circumstances, the Senior Federal Counsel who appeared for the respondent in this appeal had rightly conceded that the appellants have a legal interest in

the matter in the action. Therefore, there is no issue that the appellants should be given leave to intervene."

[37] So, clearly the Appellants in the **Damai Motor Kredit** case [supra] were persons who were within the contemplation of section 2 of the LA Act 1960. The position of the Appellants/Land owners in the **Damai Motor Kredit** case [supra] was clearly made out, where their interests were at stake as land owners and such that within the context of the LA Act 1960, the question of them applying to be made an intervener did not arise at all. They were the original parties in the proceedings before the LA. As such they ought to be named in the OS proceedings by the Respondent. As the learned Justices in the Court of Appeal had rightly ruled, the learned High Court judge was in error when he denied the Appellants' application to be made an intervener.

[38] But, 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 in this case would not warrant a similar treatment of TNB. We agree with Justice K. N. Segara JCA that the factual matrix between **SILK** case [supra] and **Sistem Penyuraian Trafik KL Barat** [supra] can be easily distinguished and if there be a

conflict, with respect, we opt to follow the decision of this Court in the **SILK** case [supra] over the decision of this Court in the **Sistem Penyuraian Trafik KL Barat** case [supra].

[39] With respect, we had found no reason to disagree with what this Court had said in the **SILK** case [supra]. We found guidance from the decision in that **SILK** case [supra] which had considered the legal framework in the context of the LA Act 1960 on almost similar set of circumstances.

Our findings and conclusions

[40] As such, the Appeals no. 757 and no. 758 are allowed. We note that our decisions in the instant Appeals would effectively put paid to Appeals no.119 and no. 120 respectively despite the agreement between the parties that these appeals be dealt with after the disposal of the appeals relating to the issue of leave to intervene by TNB. That is simply because no intervention means the issue of putting in the valuation report as Rebuttal Report by TNB would not arise at all. We make no orders as to costs for those Appeals so dismissed. Deposits are ordered to be refunded to the respective appellants.

[41] Having considered submissions on costs for appeal nos. 757 and 758, we award a global sum of RM10,000.00 to the Appellant/Land Owner subject to payment of allocator. Deposits are refunded to the Appellant.

Dated: 9 November 2016

ABANG ISKANDAR BIN ABANG HASHIM

Judge

Court of Appeal

Parties appearing:

Case No: B-01(IM)-119-04/2016 and B-01(IM)-120-04/2016

For the Appellant: Mr. Steven Thiru (Miss Mehala Marimuthoo and Mr. David Ng Yew Kiat with him); Messrs. Shook Lin & Bok

For the 1st Respondent: Dato' Malik Imtiaz (Mr. Lye Wing Voi, Miss Yap Hsu-Lyn, and Mr Pavandeep Singh with him); Messrs. W. V. Lye & Partners

For the 2nd Respondent: Mr. Muhammad Haziq bin Hashim; State Legal Advisor.

For Case No: B-01(IM)-757-04/2016 and B-01(IM)-758-04/2016

For the Appellant: Dato' Malik Imtiaz (Mr. Lye Wing Voi, Miss Yap Hsu-Lyn, and Mr Pavandeep Singh with him); Messrs. W. V. Lye & Partners

For the Respondent: Mr. Steven Thiru (Miss Mehala Marimuthoo and Mr. David Ng Yew Kiat with him); Messrs. Shook Lin & Bok

Cases referred to:

1. Collector of Land Revenue v. Alagappa Chettiar [1971] 1 MLJ 43
2. Damai Motor Kredit Sdn Bhd & Anor v Kementerian Kerja Raya Malaysia [2015] 1 CLJ 44
3. Gurtner v Circuit [1968] 1 All ER 328
4. Lembaga Lebuhraya Malaysia v. Cahaya Baru Development Bhd [2010] 4 CLJ 419
5. Pegang Mining Co Ltd v. Choong Sam & Ors [1969] 2 MLJ 52
6. Young v Bristol Aeroplane Co ltd [1944] KB 718
7. Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Inch Kenneth Kajang Rubber Ltd & Anor Other Appeals [2011] 1 CLJ 95
8. Sistem Penyuraian Trafik KL Barat Sdn Bhd v Kenny Heights Development Sdn Bhd [2009] 4 CLJ 57
9. Tohtonku Sdn Bhd v Superace (M) Sdn Bhd [1992] 2 CLJ