Wong Kin Hoong & Anor (suing for themselves and on behalf all of the occupants of Kampung Bukit Koman, Raub, Pahang) v Ketua Pengarah Jabatan Alam Sekitar & Anor

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01–1–01 OF 2012
RAUS SHARIF PCA, ABDULL HAMID EMBONG, AHMAD MAAROP, HASAN LAH AND ZALEHA ZAHARI FCJJ
20 MAY 2013

Civil Procedure — Judicial review — Application for leave — Extension of time — Whether judicial discretion or going to jurisdiction — Duty of trial judge — Hearing application for extension of time — Rules of the High Court 1980 O 53 r 3(6) — Rules of Court 2012 O 53 r 3(6), & (7)

In the present appeal, the second respondent sought to build a Carbon-In-Leach plant to process old gold mine tailings using cyanide. The second respondent then submitted an Environmental Impact Assessment report ('EIA report') to the first respondent who subsequently approved the EIA report. Dissatisfied with the approval by the first respondent, the appellants applied to the High Court under O 53 r 3 of the Rules of the High Court 1980 ('RHC') for leave to apply for judicial review to quash the first respondent's decision on 13 January 1997 and for an extension of time to file the application. The High Court dismissed the application and held that the appellants were guilty of inordinate delay as the application was filed more than 11 years after the impugned decision was made, and more than one year after it was communicated to them. It was further held that there was no good reason to extend the 40-day time frame prescribed by O 53 r 3 for the filing of the leave application. The appellants appealed to the Court of Appeal but the application was dismissed. Hence, the present appeal. The issues raised before the court were that the trial judge below ought to consider the merits of the case when considering the appellants' application for extension of time for leave to commence judicial review; and (ii) the authorities of the Federal Court in *Mersing Omnibus Co Sdn Bhd v Minister of Labour and Manpower* [1983] 2 MLJ 54*('Mersing Omnibus')* and *Ravindran v Malaysian Examinations Council* [1984] 1 MLJ 168*('Ravindran')* were bad law and ought to be overruled.

Held, dismissing the appeal with cost:

(1) The procedure relating to the filing of a judicial review application is set out in O 53 of the RHC. An application for judicial review is a two-stage process. The first stage is the leave application and the second stage is the hearing of the substantive application arguments on its merits should

leave be granted. Prior to the amendment to the RHC, the provisions relating to applications for leave for judicial review was O 53 r 1A which was later deleted and replaced with O 53 r 3(6). The same provision was adopted in the Rules of Court 2012 under which the time frame to apply for judicial review was extended from 40 days to three months (see paras 14–17).

(2) The applicable provision was O 53 r 3(6) of the RHC. An application for leave must be made within 40 days from the date when the grounds of application first arose or when the decision was first communicated to the applicant/appellant (see para 19).

(3) The principal issue in *Tang Kwor Ham* was the jurisdiction to secure an injunction against Danaharta by way of judicial review. The Federal Court in *Pengurusan Danaharta Nasional Bhd v Tang Kwor Ham & Ors and another appeal* [2007] 5 MLJ 125 had reversed the majority decision of the Court of Appeal. The decision of the High Court in refusing to grant leave was upheld by the Federal Court. The remarks in *Tang Kwor Ham* were obiter. These obiter remarks reflected an incorrect proposition of law as there was a complete absence of discussion or reference to the Federal Court decisions in *Mersing Omnibus* and *Ravindran*. The principle in *Mersing Omnibus* and *Ravindran* was still good law. Whilst it was true that both *Mersing Omnibus* and *Ravindra*n were decided under the old O 53 r 1A of the RHC, the principle in relation to an application to extend time to file an application for judicial review remained the same (see paras 28–29).

(4) The time frame in applying for judicial review prescribed by the Rules was fundamental. It goes to jurisdiction and once the trial judge had rejected the explanation for the delay for extension of time to apply for judicial review, the court no longer has the jurisdiction to hear the application for leave for judicial review. Whether the application has merits or not was irrelevant (see para 30).

[Bahasa Malaysia summary

Dalam rayuan ini, responden kedua memohon untuk membina kilang Carbon-In-Leach untuk memproses tahi lombong emas lama menggunakan sianida. Responden kedua kemudiannya menyerahkan laporan Environmental Impact Assessment ('laporan EIA') kepada responden pertama yang kemudiannya meluluskan laporan EIA tersebut. Tidak puas hati dengan kelulusan responden pertama tersebut, perayu-perayu memohon kepada Mahkamah Tinggi di bawah A 53 k 3 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') untuk izin memohon semakan kehakiman untuk membatalkan keputusan responden pertama pada 13 Januari 1997 dan untuk pelanjutan masa untuk memfailkan permohonan tersebut. Mahkamah Tinggi menolak permohonan tersebut dan memutuskan bahawa perayu-perayu adalah bersalah

kelewatan melampau kerana permohonan tersebut difailkan lebih 11 tahun selepas keputusan tersebut dibuat, dan setahun lebih selepas di maklumkan kepada mereka. Ia selanjutnya diputuskan bahawa tidak terdapat alasan yang kukuh untuk melanjutkan jangka masa 40 hari yang ditetapkan oleh A 53 k 3 untuk memfailkan izin permohonan. Perayu-perayu merayu kepada Mahkamah Rayuan tetapi permohonan ditolak. Maka rayuan ini. Isu-isu yang dibangkitkan di hadapan mahkamah adalah bahawa hakim perbicaran patut mempertimbangkan merit kes apabila mempertimbangkan permohoan perayu-perayu untuk pelanjutan masa untuk izin memulakan semakan kehakiman; dan (ii) autoriti-autoriti Mahkamah Persekutuan dalam kes *Mersing Omnibus Co Sdn Bhd v Minister of Labour and Manpower* [1983] 2 MLJ 54*('Mersing Omnibus')* dan *Ravindran v Malaysian Examinations Council* [1984] 1 MLJ 168*('Ravindran')* adalah undang-undang lapuk dan patut ditolak.

Diputuskan, menolak rayuan dengan kos:

(1) Prosedur berkaitan pemfailan permohonan semakan kehakiman telah ditetapkan di dalam A 53 of the KMT. Permohonan untuk semakan kehakiman adalah proses dua peringkat. Peringkat pertama adalah permohonan izin dan peringkat kedua adalah pendengaran substantif permohonan hujahan atas meritnya jika izin dibenarkan. Sebelum pindaan kepada KMT, peruntukan berkaitan permohonan untuk izin semakan kehakiman adalah A 53 k 1A yang mana kemudiannya dibatalkan dan digantikan dengan A 53 k 3(6). Peruntukan yang sama diguna pakai dalam Kaedah-Kaedah Mahkamah 2012 di mana jangka masa untuk memohon semakan kehakiman dilanjutkan dari 40 hari kepada tiga bulan (lihat perenggan 14–17).

(2) Peruntukan yang boleh diguna pakai adalah A 53 k 3(6) KMT. Permohonan untuk izin mesti dibuat dalam masa 40 hari dari tarikh apabila alasan permohonan mula berbangkit atau semasa keputusan mula diberitahu kepada permohonan/perayu (lihat perenggan 19).

(3) Isu utama dalam kes *Tang Kwor Ham* adalah bidang kuasa untuk menjamin injunksi terhadap Danaharta melalui semakan kehakiman. Mahkamah Persekutuan di dalam kes *Pengurusan Danaharta Nasional Bhd v Tang Kwor Ham & Ors and another appeal* [2007] 5 MLJ 125 telah mengakas keputusan majoriti Mahkamah Rayuan. Keputusan Mahkamah Tinggi dalam menolak membenarkan izin disahkan oleh Mahkamah Persekutuan. Kata-kata dalam kes *Tang Kwor Ham* adalah obiter. Kata-kata obiter ini membayangkan cadangan undang-undang yang tidak betul kerana ketiadaan perbincangan yang lengkap atau rujukan kepada keputusan Mahkamah Persekutuan dalam kes *Mersing Omnibus* dan *Ravindran*. Prinsip dalam kes *Mersing Omnibus* dan *Ravindran* masih undang-undang yang baik. Sementara ia adalah betul

bahawa kedua-dua kes *Mersing Omnibus* dan *Ravindran* diputuskan di bawah A 53 k 1A KMT yang lama, prinsip berkaitan dengan permohonan untuk melanjutkan masa untuk memfailkan permohonan semakan kehakiman masih kekal sama (lihat perenggan 28–29).

(4) Jangka masa dalam memohon semakan kehakiman yang ditetapkan oleh Kaedah-Kaedah adalah asasnya. Ia akan dirujuk kepada bidang kuasa dan apabila hakim perbicaraan menolak penjelasan untuk kelewatan bagi pelanjutan masa untuk memohon semakan kehakiman, mahkamah tidak lagi mempunyai bidang kuasa untuk mendengar permohonan untuk izin untuk semakan kehakiman. Sama ada permohonan mempunyai merit atau tidak adalah tidak relevan (lihat perenggan 30).]

Notes

For a case on application for leave, see 2(3) *Mallal's Digest* (4th Ed, 2012 Reissue) para 5115.

Cases referred to

Mersing Omnibus Co Sdn Bhd v Minister of Labour and Manpower & Anor [1983] 2 MLJ 54, FC (refd)

Pengurusan Danaharta Nasional Bhd v Tang Kwor Ham & Ors and another appeal [2007] 5 MLJ 125, FC (refd)

Ratnam v Cumarasamy & Anor [1965] 1 MLJ 228, PC (refd)

Ravindran v Malaysian Examinations Council [1984] 1 MLJ 168, FC (refd)

Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors [2006] 5 MLJ 60, CA (not folld)

Vasudevan v T Damodaran & Anor [1981] 2 MLJ 150, FC (refd)

Legislation referred to

Environmental Quality Act 1974 s 34A
Malaysian Examinations Council Act 1980 s 9
Pengurusan Danaharta Nasional Berhad Act 1998
Rules of Court 2012 O 53 r 3(6), (7)
Rules of the High Court 1980 O 53, O 53 rr 1A, 2(4), 3, 3(6)

Appeal from: Civil Appeal No W-01–152 of 2009 (Court of Appeal, Putrajaya)

Malik Imtiaz Sarwar (Jesicca Ram Binwani, Theivanai Amarthalingam and M Sarguna Kumaari with him) (Jessica, Theiva & Kumari) for the appellants.

Suzana Atan (Shamsul Bolhassan with her) (Senior Federal Counsel, Attorney General's Chambers) for the first respondent.

Cecil WM Abraham (CS Nantha Balan, Sunil Abraham and Farah Shuhadah Razali with him) (Zul Rafique & Partners) for the second respondent.

Raus Sharif PCA (delivering judgment of the court):

INTRODUCTION

[1] This is an appeal by the appellants against the decision of the Court of Appeal which upheld the decision of the High Court in dismissing the appellants' application for leave for extension of time to file an application for judicial review pursuant to O 53 r 3 of the Rules of the High Court 1980 ('the RHC').

[2] On 6 September 2012, we heard and dismissed the appeal. We now give our reasons.

BACKGROUND FACTS

[3] Briefly, the facts are these. The company known as Raub Australian Gold Mining Sdn Bhd ('the second respondent') had been granted mining rights under a lease. At the material time, the second respondent was in the midst of building a Carbon-In-Leach Plant ('CIL Plant') near Kampung Bukit Koman, Raub, Pahang ('Kampung Bukit Koman') to process old gold mine tailings using cyanide.

[4] The director general of the Department of Environment ('the first respondent'), the authority responsible for enforcing the provisions of the Environmental Quality Act 1974 ('EQA'), had on 13 January 1997 approved the Environmental Impact Assessment ('EIA') report submitted by the second respondent ('the first decision').

[5] The appellants who were residents and owners of the properties at Kampung Bukit Koman, and also members of the committee campaigning against the construction of the CIL Plant was of the view that the EIA report did not comply with the requirements of s 34A of the EQA and/or regulations and/or guidelines thereunder. Accordingly, the appellants applied to the first respondent for the second respondent to submit a detailed EIA of the CIL Plant to it.

[6] On 21 February 2008, the first respondent informed the appellants that as the EIA report had already been approved on 13 January 1997, their request was misplaced ('the second decision').

[7] On 21 March 2008, the appellants filed an application in the High Court for leave to apply for judicial review inter alia, to quash the first decision as well as a declaration on that the second decision of the first respondent was unfair and unreasonable, against the principles of natural justice, contrary to s 34A of the EQA and in violation of their human rights. The application also sought for an extension of time to file the leave application in respect of the first decision since the application was filed outside the scope of 40 days period prescribed under O 53 r 3 of the RHC.

[8] On 1 June 2009, the High Court dismissed the appellants' application. It was held that there was inordinate delay on the part of the appellants in filing the application. The delay was more than 11 years from the time the first decision was made known to the public, and more than one year from the time it was communicated to them. It was also held that, the delay in the filing of appellants' application for leave to file the application for judicial review goes to jurisdiction and the merits of the case need not be considered in hearing an application for extension of time. In respect to the second decision, the learned judge held that it was not a decision that is amenable to judicial review.

[9] On 3 August 2011, the Court of Appeal, unanimously affirmed the decision of the learned High Court judge.

LEAVE TO APPEAL TO FEDERAL COURT

[10] On 11 January 2012, leave to appeal was granted by this court and the sole question framed for determination was:

> Having regard to the decisions of the Supreme Court in *Mersing Omnibus Co Sdn Bhd v Minister of Labour and Manpower* [1983] 2 MLJ 54, and *Ravindran v Malaysian Examinations Council* [1984] 1 MLJ 168 and the Court of Appeal in *Tang Kwor Ham v Pengurusan Danaharta Nasional* [2006] 1 CLJ 927 whether a court is required to consider the merits of an application for leave to commence judicial review made under O 53 r 3 of the Rules of the High Court 1980 when determining an application for an extension of time to file the said leave application?

SUBMISSIONS

[11] Encik Malik Imtiaz Sarwar, learned counsel for the appellants submitted that the question posed should be answered in the affirmative. He argued that the amendment to O 53 r 3(6) of the RHC in 2000 had the effect of permitting the court to consider the merits of the case in considering an application for extension of time for leave to file an application for judicial review. He submitted that the two decisions of the Federal Court in *Mersing Omnibus Co Sdn Bhd v Minister of Labour and Manpower & Anor* [1983] 2 MLJ 54 ('Mersing Omnibus') and *Ravindran v Malaysian Examinations Council*

[1984] 1 MLJ 168 ('Ravindran') which precluded an examination of the merits of the case was no longer good law as these two cases were decided prior to the amendment of O 53 r 3(6) of the RHC. Learned counsel urged this court to adopt the majority decision of the Court of Appeal's decision in the case of *Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional & Ors* [2006] 5 MLJ 50 ('Tang Kwor Ham').

[12] Tan Sri Dato' Cecil WM Abraham, learned counsel for the second respondent submitted otherwise. He submitted that all that the 2000 amendment to O 53 did was, inter alia, to extend the time limit within which an applicant may file an application for leave to file an application for judicial review. The amendments made no mention that the merits of an application should be considered in considering an application for extension of time. According to him, there was no change, except for the prescribed period in filing an application for judicial review. According to him *Mersing Omnibus* and *Ravindran* were still good law. He further submitted that the appellants' reliance in the majority decision of *Tang Kwor Ham* was misconceived as the principal issue in *Tang Kwor Ham* was the right to secure injunctive relief and the case was not concerned with the issue of extension of time nor the consideration of merits at the leave stage.

[13] Puan Suzana Atan, learned senior federal counsel who appeared on behalf of the first respondent, supported the submissions of the learned counsel for the second respondent.

She reiterated that, the principle enunciated in *Mersing Omnibus* and *Ravindran* was still good law. She further submitted that in the present case there was no good reason being adduced by the appellants to show that they had accounted for the delay to the satisfaction of the court.

FINDINGS

[14] The procedure relating to the filing of a judicial review application is set out in O 53 of the RHC. An application for judicial review is a two-stage process. The first stage is the leave application and the second stage is the hearing of the substantive application arguments on its merits, should leave be granted.

[15] Prior to the amendment made in 2000 to the RHC, the provisions relating to an application for leave for judicial review was O 53 r 1A which provides as follows:

> 1A. Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, conviction or other proceedings for the purpose of its being quashed, unless the application for leave is made within 6 weeks after the date of the

proceedings or such other period (if any) as may be prescribed by any enactment or, except where a period is so prescribed, the delay is accounted for to the satisfaction of the Court or Judge to whom the application for leave is made and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the Court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

[16] In year 2000, amendment to the RHC saw the deletion of O 53 r 1A and replaced by O 53 r 3(6) which provides that:

3(6) An application for judicial review shall be made promptly and in any event within 40 days from the date when the grounds for the application first arose or when the decision is first communicated to the applicant provided that the Court may, upon application and if it considers that there is a good reason for doing so, extend the period of 40 days.

[17] The same provision was adopted in the Rules of Court 2012 that came into effect on 1 August 2012. Under the Rules of Court 2012, the time frame to apply for judicial review was extended from 40 days to three months. Order 53 r 3(6)–(7) of the Rules of Court 2012 provides as follows:

(6) An application for judicial review shall be made promptly and in any event within (3) three months from the date when the grounds of application first arose or when the decision is first communicated to the applicant.

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

[18] A common factor in the above provisions is that an application for leave for judicial review must be made promptly but the court may upon application, and if it considers that there is good reason for doing so, extend it. Thus, whether an extension of time ought to be granted or otherwise is an exercise of judicial discretion. And it is a well-settled principle that an appellate court will rarely interfere with the court exercise of judicial discretion unless it is clearly satisfied that the discretion had been exercised on a wrong principle (see Federal Court decision in *Vasudevan v T Damodaran & Anor* [1981] 2 MLJ 150 and Privy Council case of *Ratnam v Cumarasamy & Anor* [1965] 1 MLJ 228).

[19] In the present case the applicable provision at the material time when the appellants filed their application for judicial review was O 53 r 3(6) of the RHC. Under the said order, an application must be made within 40 days from the date when the grounds of the application first arose or when the decision is first communicated to the applicant. As stated earlier, the learned trial judge finding was that the application was made more than 11 years from the time

the first decision was made known to the public, and more than one year from the time it was communicated to the appellants.

The trial judge also ruled that there was no good reason for extending the then prescribed period of 40 days.

[20] The Court of Appeal agreed with the decision and reasoning of the trial judge and therefore found no reason to interfere with the judge's exercise of discretion. However, that was not the issue before us. The sole issue before us was whether the learned judge, in exercising her discretion, was required to take into consideration the merits of the case.

[21] As stated earlier, learned counsel for the appellants' contention was that the trial judge ought to consider the merits of the case when considering the appellants' application for extension of time for leave to commence judicial review. He argued that the Federal Court cases of *Mersing Omnibus* and *Ravindran*, which precluded the examination of the merits of the case, should be overruled. Instead he urged us to adopt the majority decision of the Court of Appeal in the case of *Tang Kwor Ham* as it purported to reflect the current position in dealing with an application for leave for judicial review.Thus, it is important for us to look at the three cases more closely.

[22] *Mersing Omnibus* was concerned with the interpretation of O 53 r 1A of the RHC. In that case, the Minister of Labour and Manpower on 23 November 1981 made a decision that Mersing Omnibus was to extend their recognition to the union for the categories of employees stipulated therein. On 9 January 1982, Mersing Omnibus sought leave to apply for an order of certiorari to quash the decision of the Minister. Leave was granted by the trial judge but subsequently, on the substantive application for certiorari, the application was dismissed. Mersing Omnibus appealed. The Federal Court held that Mersing Omnibus's application for leave was filed after six weeks had lapsed from the decision of the Minister. It was then held that, as Mersing Omnibus was out of time, and as it had neither sought an extension of time nor accounted for the delay to the satisfaction of the judge, leave should not in the first place have been granted to Mersing Omnibus.

[23] In *Ravindran*, the Malaysian Examinations Council in exercise of its powers under s 9 of the Malaysian Examinations Council Act 1980 had annulled all of the results of Ravindran in the 1982 STP examination. The order was made on 6 July 1983 and Ravindran received the order on 15 July 1983. Ravindran's application for certiorari to quash the Malaysian Council's order was made on 30 August 1983. It was eight days out of time, if the time were to run from the date of the council's decision was served, and 13 days out of time, if the time runs from the date of the decision of the council. The trial judge dealt with two aspects of the issue before him. First, he dealt with the

reason for the delay in applying for the extension of time. Secondly, he dealt with the merits of the case if the explanation for the delay was accepted. The learned trial judge rejected the explanation for the delay. On appeal, the Federal Court was of the view that the whole issue was one of jurisdiction. It was held that as the learned trial judge had rejected the explanation for the delay it follows that the learned trial judge had no jurisdiction to hear the application for leave for an order of certiorari.

[24] In *Tang Kwor Ham*, the company had a non-performing loan ('NPL') of about RM26m pursuant to credit facilities granted to it. The NPL was acquired by Danaharta under the Pengurusan Danaharta Nasional Berhad Act 1998 ('Danaharta Act'). A workout proposal prepared and submitted by the special administrators to Danaharta, together with the report of an independent advisor was approved by Danaharta and the majority of the secured creditors of the company. The workout proposal recommended the sale of the subject land at RM7.6m. The applicants in that case who were three of the four directors of the company, claimed that the correct value of the subject land was not less than RM15m. Thus, the applicants on behalf of themselves and also by way of representative and derivative action on behalf of the company, sought leave to apply for judicial review of the workout proposal. The applicants claimed that the workout proposal was infused with public elements and was thus amenable to judicial review.

[25] The learned High Court judge rejected the applicant's leave to apply for judicial review. He held, inter alia, that the workout proposal does not come within the purview of the decision of a 'public authority' in O 53 r 2(4) of the RHC; but concerns commercial transactions made by persons and bodies who were private entities. The learned High Court judge also held that the infusion of public element and public interest in the Danaharta Act does not *ipso facto* make the workout proposal a decision of a 'public authority'.

[26] The majority decision of the Court of Appeal decided otherwise. By majority, the order of the High Court was set aside and the motion for leave was granted. Learned judge, Gopal Sri Ram, JCA (as he then was) speaking for the majority decision, inter alia, held that:

> The only circumstance in which a court may, on a leave application, undertake a closer scrutiny of the merits of the case is on an application for extension of time to apply for judicial review. It is not difficult to see why this is so. A party applying for an extension of time is really relying on the court to exercise discretion in his or her favour. And it is trite that the onus is on such a person to satisfy the court that there are good grounds why discretion ought to be favourably exercised. To that end, it is necessary for an applicant to place all relevant material before the court to demonstrate that he or she has more than an arguable case on the merits. It therefore becomes a matter of necessity for the court to scrutinise the material before it with

some care to ensure that there is a good arguable case on the merits warranting the exercise of discretion in the applicant's favour. This is, of course, in addition to the requirement that the applicant must provide a satisfactory explanation for the delay on his or her part.

[27] Gopal Sri Ram JCA went on further to state that:

> … It is not an improper exercise of discretion for a judge who forms the preliminary view that an application for extension ought to be refused to hear full argument on the merits of the case for the purpose of testing his preliminary conclusion against the other issues that arise in the case, including the strength and weakness of the respondent's case. For, it may well be that after considering the merits, he may come to the conclusion that although the particular applicant was guilty of inordinate delay, the public interest and the conduct of the respondent justifies the grant of an extension of time. I would add that this approach is not confined only to applications for judicial review but civil proceedings generally.

[28] With respect, we are unable to agree with the proposition made by Gopal Sri Ram JCA in *Tang Kwor Ham*. Firstly, as rightly pointed out by learned counsel for the second respondent, the principal issue in *Tang Kwor Ham* was the jurisdiction to secure an injunction against Danaharta by way of judicial review. The Federal Court in *Pengurusan Danaharta Nasional Bhd v Tang Kwor Ham & Ors and another appeal* [2007] 5 MLJ 125 had reversed the majority decision of the Court of Appeal. The decision of the High Court in refusing to grant leave was upheld by the Federal Court.

[29] Secondly, we are of the view that the remarks of Gopal Sri Ram JCA as produced earlier in this judgment were obiter. These obiter remarks reflect an incorrect proposition of law as there was a complete absence of discussion or reference to the Federal Court decisions in *Mersing Omnibus* and *Ravindran*. Finally, we are of the view that the principle in *Mersing Omnibus* and *Ravindran* is still good law. Whilst it is true that both *Mersing Omnibus* and *Ravindran* were decided under the old O 53 r 1A of the RHC but the principle in relation to an application to extend time to file an application for judicial review remains the same.

[30] In conclusion, we are of the view that the time frame in applying for judicial review prescribed by the Rules is fundamental. It goes to jurisdiction and once the trial judge had rejected the explanation for the delay for extension of time to apply for judicial review, it follows that the court no longer has the jurisdiction to hear the application for leave for judicial review. Whether the application has merits or not, is irrelevant.

[31] For all the reasons stated above, we unanimously answered the sole question posed in the negative. We therefore dismissed the appeal with costs.

Appeal dismissed with costs.

Reported by Afiq Mohamad Noor