

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR**

**(BAHAGIAN RAYUAN DAN KUASA-KUASA KHAS)**

**PERMOHONAN BAGI SEMAKAN KEHAKIMAN**

**NO: R1-25-193-2005**

Dalam perkara permohonan di bawah  
Aturan 53 Kaedah-Kaedah Mahkamah  
Tinggi 1980;

**DAN**

Dalam perkara mengenai Seksyen 12  
dan 15 Akta Kesatuan Sekerja 1959;

**DAN**

Dalam perkara Perjanjian Kolektif  
antara Malayan Commercial Banks'  
Association (MCBA) dan Kesatuan  
Kebangsaan Pekerja-Pekerja Bank  
(NUBE);

**DAN**

Dalam perkara Aturan 3  
Perlembagaan & Peraturan-Peraturan  
NUBE.

**ANTARA**

**KESATUAN KEBANGSAAN PEKERJA-PEKERJA ... PEMOHON  
BANK (NUBE)**

**DAN**

- 1. KETUA PENGARAH KESATUAN SEKERJA  
(DGTU)**
- 2. AMBANK (M) BERHAD**
- 3. KESATUAN PEKERJA-PEKERJA  
AMFINANCE BERHAD (KEPPA) ... RESPONDEN-  
RESPONDEN**

## JUDGEMENT

1. This is an application by the National Union of Bank Employee (“applicant”) for judicial review seeking, *inter alia*, the following remedies:-
  - (a) a declaration that the Director General of Trade Union (“the first respondent”) has acted contrary to the Trade Union Act 1959 (“the Act”) specifically s. 12(2) and 12(3) of the Act, in registering Kesatuan Pekerja-Pekerja AmFinance Berhad (“the third respondent”) of which scope of its membership was at the material time the same as the applicant with regards to the employees of AmBank (M) Berhad (“the second respondent”); and
  - (b) an order of *mandamus* directing the first respondent to take steps to deregister the third respondent under s. 15 of the Act.

2. The relevant facts leading to applicant's application are these. On 13 December 2004, the first respondent in pursuant to s. 12(1) of the Act registered the third respondent as a in-house union of AmFinance Bhd. About two weeks after its registration, AmFinance Bhd granted recognition to the third respondent. What happened next was that on 1 June 2005, by a court order, AmFinance Berhad took over all the assets, liabilities, rights and obligations of the business of AmBank Berhad and changed its name to AmBank (M) Berhad ie, the second respondent.
  
3. Before me, it is the contention of En. R. Sivarasa, representing the applicant, that with the merger of AmBank Berhad and AmFinance Bhd (which is currently known as AmBank (M) Berhad), the third respondent should be deregistered as a union, as its continued existence is contrary to the policy in s. 12(2) of the Act which discourages multiplicity of unions within the same industry, trade, establishment or occupation. According to En. R. Sivarasa, the third respondent's scope of

representation in the second respondent overlaps with that of the applicant.

4. Thus, the issue before me is whether or not the first respondent in registering the third respondent had properly exercised his discretion under s. 12(2) of the Act. Section 12(2) of the Act provides as follows:-

“The Director General may refuse to register a trade union in respect of a particular establishment, trade, occupation or industry, if he is satisfied that there is in existence a trade union representing the workmen in that particular establishment, trade, occupation or industry and it is not in the interest of the workmen concerned that there be another trade union in respect thereof.”

5. Senior Federal Counsel, Puan Narkunavathy, representing the first respondent, submitted that, since at the time of the

registration of the third respondent there was no other union representing the employees in AmFinance Berhad, there was no impediment for the registration of the third respondent by the first respondent. En. S. Rutheran and En. D. Krishna whom representing the second and third respondents respectively, were of the same views.

6. I am in agreement with the respondents. To me, the impediment to register a trade union under s. 12(2) would only arise if there is another union representing the employees in an a particular establishment, trade, occupation or industry. Clearly, in this instance, at the time when the third respondent was registered by the first respondent, there was no other union representing the employees of AmFinance Berhad. Thus, the issue of multiplicity of unions within the particular establishment, trade, occupation or industry does not arise.

7. Another main issue raised by En. R. Sivarasa was that the first respondent had acted in breach of natural justice when he failed to afford the applicant an opportunity of being heard. In

advancing this argument En. R. Sivarasa, referred to my judgment in *Association of Bank Officer, Peninsular Malaysia v. Ketua Pengarah Kesatuan Semenanjung Malaysia and Anor* [2004] 7 MLJ 109 (*ABOM's* case) where I decided that an affected parties must be afforded an opportunity to be heard before the registration of another union.

8. With respect, the principle in *ABOM's* case is not applicable in the instant case. The facts are distinguishable. In *ABOM's* case, when the union called Keppak Bumiputra was registered there were already two existing unions in Bumiputra Commerce Malaysia (BCB) namely, Kesatuan Eksekutif Bumiputra Commerce Bank Bhd (“BOCESU”), a in-house union, and Persatuan Pegawai Bank Semenanjung Malaysia (“ABOM”) a national union. The Director General of Trade Union (DGTU) being aware of the existence of the two unions failed to consult them and afforded them the right to be heard before registering Keppak Bumiputra. For the said reasons I

hold that the DGTU was wrong in not consulting and affording BOSCESU and ABOM the right to be heard.

9. In the instant case, when the third respondent was registered, there was no other union representing the employees of AmFinance Bhd. Hence, the issue that the applicant was not afforded the right to be heard does not arise.
10. In conclusion, I am of the view that the first respondent was not in breach of s. 12(1) of the Act. Accordingly the applicant's application is hereby dismissed with costs.

Dated: 11 MAY 2006

**RAUS SHARIF**  
Hakim  
Mahkamah Tinggi Malaya  
Kuala Lumpur



**COUNSELS:**

*For the applicant - R Sivarasa; M/s Daim & Gamany Advocates & Solicitors*

*For the first respondent - SFC Narkunavathy Sundareson FC Asma Ibrahim; Jabatan Peguam Negara, Malaysia*

*For the second respondent - S Rutheran; M/s Sivagnanam & Associates*

*For the third respondent - D Krishna K Indran; M/s Indran Guru & Co*

