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## Application Of The Land Acquisition Act 1960 & Order 15 Of The Rules Of Court 2012: Analysis Of The *Spicon Products* Case

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In *Spicon Products Sdn Bhd v. Tenaga Nasional Bhd & Anor* [2022] 4 CLJ 195, the ultimate issue raised before the Federal Court was whether a landowner who has, without any objection, accepted an award of compensation made by the land administrator is entitled to intervene and participate in land reference proceedings initiated by another interested party.

### Background Facts

A piece of land belonging to Spicon Products Sdn Bhd (the Appellant) in Melaka was acquired by Tenaga Nasional Berhad (TNB) for the purpose of constructing a main substation. The land administrator conducted an enquiry via Form E and this eventually led to the Appellant being awarded a compensation of RM467,154.22. The Appellant accepted the award without any objection and consequently, did not file any Form N. TNB on the other hand, objected to the award by lodging an objection vide Form N. The land administrator then referred TNB's objection to the High Court vide Form O. In the land reference proceeding, TNB and the land administrator were cited as applicant and respondent. The appellant, however, was not cited as a party although Form O has identified the Appellant as "*a person interested in the land*".

To protect its interests, the Appellant then decided to intervene in the land reference by invoking Order 15 rule 6(2)(b) of the Rules of Court 2012. The Appellant explained that it ought to be allowed to intervene on the basis that it was the landowner and as the recipient of the compensation, it would be prejudiced by any reduction to the compensation amount. The respondent opposed this application stating, amongst others, that the Appellant's non-filing of Form N was fatal and thus, precluded the Appellant from taking part in the land reference proceedings.

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## The High Court's Decision

After examining Sections 37(1) and 38(1) of the Land Acquisition Act 1960 (LAA 1960), the High Court agreed with the Appellant. The court held that these provisions do not compel a person such as the Appellant to file Form N where it had no objections to the award. The court also did not find the non-filing of Form N as fatal since it was not the Appellant who was dissatisfied with the award - only a party objecting to an award is required to file Form N thus allowing the intervention in order to protect its interests which may be adversely affected.

## The Court Of Appeal's Decision

The matter before the Court of Appeal was whether the Appellant must file Form N in order to take part in the land reference proceeding. TNB argued that the Appellant's application to intervene under Order 15 rule 6(2)(b) was an abuse of court process and that the filing of Form N is trite according to law. The Court of Appeal held that the Appellant's interest "*is sufficiently safeguarded*" by the land administrator who is to defend the award and held that the Appellant is obliged to file the Form N.

## The Analysis Of The Federal Court's Grounds

The Federal Court held that on the receipt of Form N, the land administrator was obliged to refer every written objection to the High Court within the time prescribed or within any extended time, vide Form O. In highlighting the importance of Form O, the Federal Court stated that it was evidently clear that the Appellant's name and address were repeatedly disclosed in the said Form O. From interpolating from what was discussed and submitted by both parties, the Federal Court stated that the Appellant was not entitled to lodge any objection as it did not fulfil the requirements of Section 37(1) of the LAA 1960. This was because the Appellant had accepted the compensation beforehand without any reservation. Thus, to insist that the Appellant had to lodge an objection through Form N when the Appellant did not fall within the category of persons qualified was an error on the part of the Court of Appeal.

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## The Rules Of Court 2012 & Federal Constitution

What is the position of a landowner who was not notified and directed by the High Court to appear at the reference proceedings? The Federal Court took the view that in such a situation the Rules of Courts 2012 apply as it complements the LAA 1960 by virtue of Section 45(2) of the LAA 1960:

*“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.”*

Further, a landowner has a right to be added as a party to matters pertaining the adequacy of compensation and to appear at reference proceedings as envisaged by Article 13(1) of the Federal Constitution. Article 13(1) guarantees that no person shall be deprived of property save in accordance with law. It was further discussed that none of the provision within the LAA 1960, whether expressed or by necessary inference, provided for the exclusion of a landowner who has accepted an award without an objection to participate at any land reference proceedings. Thus, this entitled the landowner, whose land was being acquired and whose interests were affected by objection, to invoke Order 15 rule 6.

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## TNB's Contention

TNB in their argument had, among others, relied on the Federal Court case of *Tenaga Nasional Bhd v. Unggul Tangkas Sdn Bhd & Anor And Other Appeals* [2018] 4 CLJ 285. In short, after noting that Section 45(2) of the LAA 1960 only provides for a complementary role to the Rules of Court 2012, it was held that Order 15 rule 6(2)(b) had no application in the context of the case. The Federal Court cited with approval to the Court of Appeal case of *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Inch Kenneth Kajang Rubber Ltd & Anor & Other Appeals* [2011] 1 CLJ 95, where it would amount to abuse of the process of the court, an attempt to circumvent the clear and unambiguous provisions of the LAA 1960 and that the filing of Form N was the most appropriate and only mode available under the LAA 1960 to become a party in a land reference proceeding.

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## About Us

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## The Federal Court's Decision

However, the Federal Court in analysing the decision made in *Unggul Tangkas* opined that their analysis was more comprehensive and addressed a few critical aspects as compared to the decision in *Unggul Tangkas*. It was held that the interests of all 'persons interested' must be considered by the court when determining the objection or adequacy of compensation. Section 45(2) of the LAA 1960 must be seen as an enabling provision to ensure all persons interested are facilitated, and in the present appeal, through Order 15 rule 6 of ROC 2012. It was also held that the application of the Rules of Court 2012 to intervene in the reference proceedings may be made in appropriate circumstances. The Appellant's interests as landowner will definitely be affected by the eventual outcome of such reference proceedings regarding compensation.

## Conclusion

The above judgement illustrates the significance of the Federal Court in extensively analysing the provisions of the LAA 1960 and the significance of Article 13 of the Federal Constitution in the circumstances of each case. This decision by the apex court effectively rules that a landowner whose land is being compensated due to an acquisition process is entitled to intervene in the reference proceedings initiated by another party even though the landowner had originally accepted the compensation award.

This case also left an important reminder that there should be no injustice caused to any persons interested in the name of speedy disposal and that the construction and interpretation of the LAA 1960 should always have the consideration that such hearings are to determine the adequacy of compensation and the identity of persons interested.

Authored by Syed Amri Hakim, a pupil from the firm's Dispute Resolution department.

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