

Judicial Review – An Analysis Of Damien Thaman Divean & Anor v Majlis Eksekutif Negeri Selangor Darul Ehsan (Exco) & Ors

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Judicial review applications frequently turn on two threshold questions – whether the applicant possesses the requisite locus standi and whether the challenge has been brought within the prescribed time limits. These preliminary issues often prove determinative of whether the merits can be considered.

This alert examines the Federal Court's decision in *Damien Thaman Divean & Anor v Majlis Eksekutif Negeri Selangor Darul Ehsan (Exco) & Ors* [2026] CLJU 772 focusing on its treatment of locus standi and limitation.

Background Facts

The case concerns an application for judicial review arising from the de-gazettement of the Cherakah Forest Reserve (Land), which had been previously gazetted as a permanent forest reserve since 1909.

Since 2000 and continuously over the course of 2 decades, the Land had been progressively degazetted for residential and development purposes. The present application arose from the initial de-gazettement in 2000 where no public inquiry was held (De-gazettement). Over the ensuing years, the Land was developed into an enclave known as Alam Budiman, comprising housing estates, commercial buildings, schools and a university.

In 2022, a gazette notification formalising the de-gazettement of the Land was published (Gazette Notification), with the effective date of cessation stated as 20.11.2000 pursuant to Section 13 of the National Forestry Act 1984 (NFA).

The 1st Applicant, Pertubuhan Pelindung Khazanah Alam (PEKA), together with the 2nd Applicant, Persatuan Rimba Komuniti Shah Alam (SACF), filed an application for judicial review challenging the De-gazettement and sought a declaration that a public inquiry is a mandatory prerequisite before any de-gazettement could be effected.

The High Court held that the Applicants (i.e. PEKA and SACF) lacked *locus standi* as the Applicants were established post the De-gazettement (i.e. in 2010 and 2016 respectively). In that regard, the High Court held that they could not have been adversely affected by a decision made prior to their existence. The High Court also noted that the judicial review application was filed out of time as the decision to de-gazette the Land was made in 2000.

On appeal, the Court of Appeal accepted that as nature conservationists, the Applicants had a real and genuine interest in relation to the De-gazettement of the Land and satisfied the 'adversely affected test'. However, the Court of Appeal affirmed the High Court's finding that the JR application was time-barred.

Federal Court's Ruling

In exercising their final avenue of appeal, the Applicants appealed to the Federal Court. The majority in the Federal Court held as follows:

- a) Firstly, on the matter of *locus standi*, the Federal Court reversed the finding of the Court of Appeal and held that the Applicants possessed no rights at the time of the decision. In doing so, the Federal Court considered the material time when the de-gazettement was made and when both the Applicants were established or came to function:

"[15] The decision to degazette was in 2000. The first appellant was formed in 2010. The second appellant came into existence in 2016. Thus, the appellants did not acquire or had any rights when the decision was made to degazette the land. Appellants had no interest to protect when the decision to degazette was made."

- b) The Federal Court emphasised that the extensive development of the Land rendered it impractical to prioritise the interests of the Applicants over the residents who could be displaced in terms of priority in interest by a smaller group if the leave for judicial review is allowed;
- c) Secondly, on the issue of limitation, the Federal Court affirmed that the application was time-barred for the following reasons:
 - (i) Section 13 of the NFA did not impose a date requirement for such notification. As such, the Gazette Notification made in 2022 was good in law:

“[30] It is also permissible for the gazette in 2022 to be used to validate the decision made in 2000 in the cessation of the land as forest reserve. This is because the HC correctly found that s. 20 of the Interpretation Acts 1948 and 1967 (IA), allows for subsidiary legislation to operate retrospectively, provided it does not impose penalties.”

- (ii) In taking the position that time began to run in 2000, the Applicants’ failure to apply for an extension of time meant that the Federal Court had no reason to exempt the Applicants from complying with the timeline of 3 months.

Notably, the minority judgment of the Federal Court departed from the majority and emphasised that the Applicants, in representing their organisations, could still be adversely affected by the Gazette Notification. It was opined in the minority judgment that time should run from when the decision was officially communicated, i.e. via the Gazette Notification:

“[106] the applicants do not have the x-ray vision to look past the walls of secrecy into the minutes of the State Exco's Meeting ... the applicants should not be put to greater difficulties in deciphering what, when and to what extent an excision of the land may have been made”.

Commentary

Damien Thaman represents a significant consideration in public administrative law as it sheds light on the opaque nature of several governmental decisions which remain subject to public scrutiny. Judicial review demands prompt action to prevent applicants from sleeping on their rights, yet *Damien Thaman* reveals the irony of enforcing strict limitation periods even when decisions have been communicated with delay.

In finding that the grounds for judicial review arose from the moment the Applicants ought to have known of the decision rather than the date of the communication itself, the Federal Court has effectively held that the requirement of communication could be satisfied by virtue of external factors. A person adversely affected by the actions, decisions and/or omissions of a public authority must therefore be vigilant in safeguarding their interests as a formal notice may not be given when time begins to run.

The Federal Court's decision in *Damien Thaman* ultimately illustrates the balancing act between procedural requirements and substantive fairness. While the majority judgment's strict approach to *locus standi* and limitation provides for certainty and finality, it may also risk insulating undisclosed executive actions from scrutiny. *Damien Thaman* therefore raises important questions as to whether the law has struck the right balance between the administrative requirements in the avenue of judicial review.

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