ADMISTRATIVE LAW

Administrative Law – Decision of Native Courts – Whether amenable to judicial review – Status of Native Courts

Lynawati Binti Abdullah v Abang Sukori bin Abang Haji Gobil and Native Court of Appeal
[Civil Appeal No. Q-01-203-05/2013] Court of Appeal, Sabah and Sarawak

Facts The dispute between the appellant and the respondent concerned the rightful ownership of six parcels of native customary rights land. The dispute was first heard in the Chief's Court, which decided in the appellant's favour. The respondent appealed to the District Native Court which ruled that the appellant was not a native of Sarawak when she acquired the disputed land and thus had no locus in any action before a Native Court. The appellant appealed to the Native Court of Appeal but it was dismissed. The appellant then applied to the High Court for leave to file a judicial review application, with a view of obtaining an order of *certiorari* to quash the decision of the Native Court of Appeal but this was not successful. The High Court ruled that a decision made by the Native Court of Appeal is not amenable to judicial review. The appellant appealed.

Issue The main question before the Court of Appeal was whether a decision made by the Native Court of Appeal of Sarawak is amenable to judicial review by the High Court.

Held In allowing the appeal, the Court of Appeal held that the Native Courts of Sarawak, which is established by the State laws of Sarawak, are inferior tribunals. Thus, the High Court may exercise control over the Native Courts through prerogative orders and that the decision made by the Native Court of Appeal of Sarawak is amenable to judicial review by High Court.