

Summary of the Claim

High Court of Sabah and Sarawak at Kota Kinabalu

[BKI-22NCvC-88/11-2020](#)

Judge: YA Tuan Leonard David Shim

Judicial Commissioner

High Court of Kota Kinabalu

2nd Plaintiff: Nur Natasha Allisya binti Hamali

Form 4 Sains Sukan "4 SS" in 2017

Former SMK Taun Gusi student and school prefect

1st Plaintiff: Rusiah binti Sabdarin

Form 4 Sains Sukan "4 SS" in 2017

SMK Taun Gusi student and 4 SS class monitor

3rd Plaintiff: Calvina binti Angayung

Form 4 Sains Sukan "4 SS" in 2017

Former SMK Taun Gusi student and head prefect

LAWS VIOLATED

Public Officers (Conduct and Discipline)

Regulations of 1993

- Regulations 3A, 3C(1), 3C(2), 23, 24, 25
- Breached by **D1, D2**

Education Act of 1996

- Failure to prepare for examinations, unlawful acts and omissions, no reasonable actions taken, right to a quality education
- Breached by **D1, D2, D3, D4, D5**

Misfeasance in Public Office

- Committing unlawful acts and knowingly causing injury & losses while in capacity as public officers
- Committed by **D1, D2, D3, D4, D5**

Federal Constitution

- Violations of articles 5 & 12 on right to education: no reasonable actions taken to prevent, willful and intentional acts and/or omissions, had knowledge or means of knowledge of harm inflicted
- Violated by **D1, D2, D3, D4, D5**

United Nations Convention on the Rights of the Child (ratified by Malaysia in 1995)

- All relevant articles, including right to education
- Violated by **D5**

REMEDIES

1. **Declarations that D1, D2, D3, D4, and D5** breached their statutory duties under the Education Act by (1) failing to teach the Plaintiffs English class from March to October 2017 and (2) failing to prepare them for examinations. Likewise, they (3) violated her constitutional right to access education under Article 5 & 12 under the Federal Constitution.
2. **Declaration that D2** (4) breached his duties under Regulation 3C, 25, and 26 of the Public Officers (Conduct and Discipline) Regulations 1993.
3. **Declaration that the acts by D1 and D2** (5) amounted to misfeasance in public office.
4. Exemplary, General, and Aggravated Damages; costs; & any further relief deemed fit and proper.

DEFENDANTS

D1 — Mohd Jainal bin Jamran

Form 4 Sains Sukan English teacher of SMK Taun Gusi; Ministry of Education servant (transferred early 2020)

D2 — Hj. Suid bin Hj. Hanapi

Principal of SMK Taun Gusi; Ministry of Education servant [retired early 2020]

D3 — Director General of Education Malaysia

Advisor to the Minister of Education

D4 — Minister of Education Malaysia

Highest office in the Ministry of Education

D5 — Government of Malaysia

Employer and/or principal of all above defendants; defender of the Federal Constitution

MARCH 2017

- D1 frequently did not enter, arrived late, and/or left early during 4 SS English lessons
- The Plaintiffs repeatedly requested **D1** to enter; **D1** ignored their notifications

APRIL 2017

- D1 frequently did not enter, arrived late, and/or left early during 4 SS English lessons; the Plaintiffs waited and/or requested D1 to enter; D1 ignored all notifications

MAY 2017

- D1 frequently did not enter, arrived late, and/or left early during 4 SS English lessons; the Plaintiffs waited and/or requested D1 to enter; D1 ignored all notifications
- The 3rd Plaintiff informed **D2** of **D1's** refusal to teach; **D2** refused to take action against **D1** or provide a substitute teacher to 4 SS

JUNE 2017

- D1 frequently did not enter, arrived late, and/or left early during 4 SS English lessons; the Plaintiffs waited and/or requested D1 to enter; D1 ignored all notifications

JULY 2017

- Initially, **D1** frequently did not enter, arrived late, and/or left early during 4 SS English lessons; the Plaintiffs waited and/or requested **D1** to enter; **D1** ignored all notifications
- By mid-July, **D1** completely and wholly refused to enter 4 SS

MARCH TO OCTOBER 2017

- The Plaintiffs notified several teachers and school administrators of **D1's** misconduct. Despite repeated notifications, no action was taken against **D1** nor was 4 SS provided a substitute teacher.