

MALAYSIA
IN THE HIGH COURT OF SABAH AND SARAWAK
AT SIBU
ELECTION PETITION 26-01-2008

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BETWEEN

WONG HUA SEH - PETITIONER

10

AND

ABANG MOHD. PORKAN
BIN HAJI ABANG BUDIMAN - 1ST RESPONDENT

15

DING KUONG HIING - 2ND RESPONDENT

NOTES OF PROCEEDINGS
IN OPEN COURT
9 JUNE 2008
9:00 A.M.

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Coram: Justice Datuk Ian H. C. Chin
For Petitioner: Chong Siew Chiang & Wong Ho Leng
25 For 1st Respondent: Narkunavathy Sundareson & Nada Hanim Bt Mohd
Tajuddin, SFCs & Norhafzol Bt Kamardin, FC
For 2nd Respondent: Ling Kuong Meng

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Court: Before anyone says anything I have to make certain disclosure. It is because I believe that it is better to err on caution that I take this step to shortly disclose what the parties and counsel may not be aware but which they may later complain that I should have disclosed. I take this course also because I am smarting over the complaint that the detention of my father and
35 *my brother during the time of the Mustapha regime in Sabah in late 1969 and*

the early 1970 should have been but not disclosed. (see Sabah Foundation & 2 Ors vs Datuk Syed Kechik & Anor, Kota Kinabalu High Court) (http://kkhighcourt.com/Completed_Civil_Matters/SabahFoundation.doc)

5 What I am going to disclose relate to what happened after two of my judgments were handed down. One was the judgment in a libel case which I handed down on 5 February 1997 (see Raveychandran v Lai Su Chon & Ors) (http://kkhighcourt.com/Completed_Civil_Trials/RaveychandranNST.pd) by which I distinguished MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & Other Appeals [1995] 2 MLJ 493 and refused to give what I consider
10 to be astronomical award for damage to reputation in libel cases. The other was the judgment handed down on 13 February 1997 in respect of a election petition (see Donald Lawan v Abang Wahed bin Abang & Ors (Sri Aman High Court)) (<http://kkhighcourt.com/DonaldLawan.htm>) by which I set aside the election of Mong Ak Dagang.

15 Shortly after those two judgments, the Judges Conference was held from 24 April 1997. The then Prime Minister of Malaysia was scheduled to have a dialogue with the judges on that date. What was termed a dialogue and later reported as one was anything but a dialogue. The then Prime Minister went there to issue a thinly veiled threat to remove judges by referring to the
20 tribunal that was set up before and stating that though it may be difficult to do so it was still done. He said all that after he had expressed his unhappiness with what he termed “the Borneo Case” and after he had asked whether the judge who decided that case was present or not. No one had any doubt that he was referring to the election case though he did not mention it specifically
25 which I decided on 13 February 1997. After he was done with issuing that

threat, he then proceeded to express his view that people should pay heavily for libel. He managed to get a single response from a Court of Appeal judge who asked whether he would be happy with a sum of RM1 million as damages for libel, He approved of it and he later on made known his
5 satisfaction by promoting this judge (since deceased) to the Federal Court over many others who were senior to him when a vacancy arose.

I was devastated after hearing all that but help came immediately after the “dialogue” was over when Federal Court judges came to my side and asked me to ignore him. Equally comforting was the words of my brother High
10 Court judge who later told me that the then Prime Minister was too much. It will be recalled that the then Prime Minister not long after he assumed office had said, in a much publicized campaign against corruption, that he will put the fear of God in man but this apparently, given his diatribe in that conference, changed to instilling a fear of him if any judgment is to his
15 dislike.

To commemorate his “dialogue” with the judges a group picture was taken (which you can view by going to <http://www.kkhighcourt.com/JudgesnMahathir.htm> and from which photo you can see who were the judges present that day). To rub it in, Bernama
20 circulated a press release with one appearing in a Sabah newspaper (The Daily Express 25 May 1997 edn) looking like this and which was far from stating the truth:

PM hears judges' needs first-hand

PETALING JAYA: Prime Minister Datuk Seri Dr Mahatir Mohamad Thursday met the country's judges for a dialogue which Chief Justice of the Federal Court Tan Sri Euseff Chin said had enabled them to know each other closer.

"This is the first time the Prime Minister has come to meet the judges face-to-face," he told reporters after the meeting at a hotel in Subang near here where the judges held their annual conference.

"We feel very proud that he takes the time to come and see us and find out what we need... it just shows he is interested,"

Euseff said.

Minister in the Prime Minister's Department, Datuk Abang Ab Bakar Mustapha, whose purview includes the courts, also attended the dialogue.

Asked if the Prime Minister had any message for the judges, Euseff said: "The usual one: work hard, follow the law."

He said the Prime Minister had reiterated that he respected and accepted decisions made by the court as long as the decisions were made according to the law. — Bernama

One month later I was packed off to a boot camp together with selected judges and judicial officers. That camp lasted from May 26 to May 30. The boot camp was without any doubt an attempt to indoctrinate those attending
5 the boot camp to hold the view that the government interest as being more important than all else when we are considering our judgment. Stating this devilish notion was by no less a person then the President of the Court of Appeal. Everyone was quiet during the question sessions. Also invited to the boot camp was a lecturer from a university who berated the election case and
10 the bright spot in this episode was that a judicial officer, during question time, told the lecturer that she had no question but only a statement to make which was that the lecturer was in contempt of court. The then Prime Minister was scheduled to talk but he did not turn up and instead sent his then deputy who instead of talking invited questions and the one question I remembered being
15 asked was - Are politicians looking for girls when they are often seen loitering at posh hotel lobbies?

The perversion of justice did not stop there. My brother judge Kamil Awang was one morning looking for me after clocking in; we were both then serving in Kuching, Sarawak. When I met up with him in his chambers he was
20 distraught and he told me that he had last night received a telephone call from

the then Chief Justice asking him to dismiss the election petition that he was going to hear in Kota Kinabalu. He sought my opinion as to what to do with the telephone call. We went into the possibility of making a police report or of writing to the Chief Justice a letter to record what he had said over the
5 telephone but in the end he decided against it since it will be his words against that of the Chief Justice. I am happy to later on learned that he did not bow to the pressure put on by the Chief Justice and went on to hear the petition and thereafter making a decision based on the law and the evidence.

It ought also to be mentioned that I twice stood unsuccessfully as a Barisan
10 Nasional candidate for a Parliamentary and later for a State seat in Sabah in the 1980s and in one of those elections I was defeated by a Democratic Action Party candidate. I have also heard other election petitions, namely Yusuf Abdul Rahman v Abdul Ajis & Ors (<http://www.kkhighcourt.com/YusufAbdulRahman.pdf>) and Lee Hie Kui v
15 Song Swee Guan & Darrell Tsen (<http://www.kkhighcourt.com/LeeHieKuiSongSweeGuan.pdf>)

Now, though no longer the Prime Minister and so no longer able to carry out his threat to remove judges which should therefore should dispel any fear
20 which any judge may have of him, if ever there was such fear, nevertheless the coalition party that he led is still around and the 2nd Respondent won on a ticket of that coalition party and it may cross someone's mind that I may have an axe to grind against the party concerned or any member thereof. The petitioner in this case may also have similar view with regard to my defeat by
25 a candidate standing on the ticket of a party to which he belongs. So I wish to hear from the parties as to whether they entertain any such notion and whether

they wish to apply for my recusal so that, if any, I can make a decision thereon.

After this disclosure, litigants who were affected by the hundreds of judgment that I had handed down since those infamous days may justifiably worry as to whether any of my judgments were in any way influenced by this attempt
5 to hang the Sword of Damocles over my head. No amount of words from me would assuage you of your worry; you will have to read my judgments as to whether they are according to the evidence and the law or whether they were influenced by threat. To read all of them (except for appeal cases on
10 sentencing and appeals from the Native Courts which are not uploaded) you can access them by going to this page
(<http://www.kkhighcourt.com/downloads.htm>)

I will adjourn for half an hour to let the parties digest what I have said and to consider whether they wish to make any application for my recusal.

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Justice Datuk Ian H.C. Chn

9 June 2008