DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
(BAHAGIAN JENAYAH)

RAYUAN JENAYAH NO: 42 – 188 – 2010

ANTARA

PUBLIC PROSECUTOR ... PERAYU

DAN

ROSLI BIN DAHLAN ... RESPONDEN

AFIDAVIT RESPONDEN

Saya, **DATO' PAHLAWAN RAMLI BIN YUSUFF (N.K/P: 520229-03-5375)** seorang warganegara Malaysia yang cukup umur dan yang mempunyai alamat penyampaiaan di C-20-5, Dataran 32, No. 2, Jalan 19/1, 46300 Petaling Jaya, dengan sessungguhnya dan sucihatinya mengikrarkan dan menyatakan seperti berikut:-

1. Saya adalah seorang peguambelam dan peguamcara Mahkamah Tinggi Malaya dan kini sedang mengamal di firma guaman Tetuan Ramli Yusuff & Co.

2. Kecuali dimana dinyatakan sebaliknya, fakta-fakta yang dideposkan disini adalah dalam pengetahuan saya sendiri dan atau diperolehi daripada dokumen-dokumen dan rekod-rekod yang berada dalam jagaan saya. Afidavit saya juga menyatakan perkara-perkara yang mana saya mempercayai adalah benar dan sumber dan dan alasan pernyataan tersebut.

3. Saya telah memasuki Polis DiRaja Malaysia dalam tahun 1970. Semenjak itu saya telah berkhidmat sebagai pegawai polis aktif. Saya telah ditahan kerja pada atau lebih kurang 2.11.2007 sementara saya memegang pangkat Timbalan Pesuruhjaya Polis dan jawatan Pengarah Jenayah Komersial, Bukit Aman.

Siasatan Tersebut

4. Saya telah disiasati oleh Agensi Pencegahan Rasuah Malaysia, yang kini diketahui sebagai Suruhanjaya Pencegahan Rasuah Malaysia ("**MACC**") dan berikutan itu saya telah diserah dengan dua (2) notisn-notis ("**Notis-Notis Ramli Yusuff**") yang dikeluarkan dibawah Seksyen 32(1) Akta Pencegahan Rasuah, 1997 ("**Akta tersebut**").

*Sekarang dihadapkan dan ditunjukkan kepada saya adalah salinan Notis-Notis Ramli Yusuff tersebut dan ditanda sebagai Eksibit "**RY-1**" dan "**RY-2**" masing-masing.*

5. Saya telah meberi balasan kepada Notis-Notis Ramli Yusuff tersebut melalui suatu Akuan Berkanun yang mendedahkan asset saya. Walaupun pendedahan tersebut, MACC telah membawa tiga (3) dakwaan terhadap saya melalui Mahkamah Sesyen Kuala Lumpur Kes Tangkap No. 61-31-2007 ("**Tuduhan-tuduhan Ramli Yusuff tersebut**"). Dasar Tuduhan-tuduhan Ramli Yusuff tersebut adalah bahawa saya telah gagal untuk mematuhi Notis-Notis Ramli Yusuff tersebut.

*Adalah sekarang dihadapkan dan ditunjukkan kepada saya kertas tuduhan berkenaan dengan Mahkmah Sesyen Kuala Lumpur Kes Tangkap No. 61-31-2007 dan yang ditanda sebagai Eksibit "**RY-3**".*

6. Pada 10.3.2010, Hakim Mahkamah Sesyen Yang Bijaksana, setelah mendengar kes saya, telah mendapati bahawa pendakwaan telah gagal untuk mendedahkan kes prima facie terhadap saya dan telah mengarahkan bahawa saya dibebaskan dan dilepaskan daripada semua Tuduhan-tuduhan Ramli Yusuff tersebut. Di dalam penemuannya, Hakim Mahkamah Sesyen Yang Bijaksana telah mendapati, inter alia bahawa:-

6.1 Notis-Notis Ramli Yusuff tersebut telah dikeluarkan secara salah oleh Timbalan Pendakwaraya tanpa mempunyai dasar yang wajar untuk mempercayai bahawa saya telah membuat kesalahan dibawah Akta tersebut; dan

6.2 oleh yang demikian Notis-Notis Ramli Yusuff tersebut adalah tidak sah dan batal dari segi undang-undang.

*Adalah sekarang dihadapkan dan ditunjukkan kepada saya sesalinan Alasan Penghakiman Mahkama Sesyen Kuala Lumpur Kes Tangkap No. No. 61-31-2007 yang ditanda sebagai Exhibit "**RY-4**".*

7. Oleh kerana tidak puas hati dengan keputusan Mahkamah Sesyen Kuala Lumpur, Pendakwara telah memfailkan rayuan melalui Mahkamah Tinggi Kuala Lumpur Rayuan Jenayah No. 41A-35-2010. Pada 25.11.2011, Yang Arif Hakim yang mendengar rayuan tersebut telah mendapati rayuan Pendakwaraya tidak berasas dan telah menolak rayuan tersebut. Yang Arif Hakim juga mendapati bahawa Notis-Notis Ramli Yusuff tersebut adalah tidak sah dan batal dari segi undang-undang.

8. Pendakwaraya juga telah mendedahkan suatu pertuduhan terhadap saya dibawah Seksyen 16 Akta tersebut melalui Mahkamah Sesyen

Kota Kinabalu Kes Tangkap No. 61 – 13 – 2007 untuk kegunaan jawatan awam untuk kebaikan sendiri iaitu memberi arahan untuk penggunaan Kapal Terbang Cessna untuk meneliti tanah-tanah yang mana saya dikatakan mempunyai kepentingan. Mahkamah Sesyen Kota Kinabalu mendapati bahawa Pendakwaraya tidak dapat mendedahkan kes prima facie terhada saya dan telah mengarahkan bahawa saya dibebaskan dan dilepaskan. Timbalan Pendakwaraya telah merayu terhadap keputusan tersebut kepada Mahkamah Tinggi Kota Kinabalu yang mana rayuan tersebut ditolak pada 12.5.2010. Rayuan Pendakwaraya selanjutnya kepada Mahkamah Rayuan juga telah ditolak pada 20.6.2011.

9. Saya juga telah dibebaskan dan dilepaskan daripada suatu lagi dakwaan yang dibuat terhadap saya dibawah seksyen 168 Kanun Keseksaan di Mahkamah Sesyen Kuala Lumpur Kes Saman No. 61-126-2007. Pendakwaraya juga telah memfailkan rayuan tersebut keputusan tersebut melalui Mahkamah Tinggi Kuala Lumpur Rayuan Jenayah No. 42A-126-2010. Sekali lagi saya telah dibebaskan dan dilepaskan. Sekali lagi Pendakwaraya tidak puas hati dengan kputusan Mahkamah Tinggi telah memfailkan rayuan kepada Mahkamah Rayuan.

Guaman Terhadap Kerajaan Malaysia yang Dicadangkan

10. Setelah dilepaskan dan dibebaskan daripada semua tuduhan jenayah terhadap saya, saya telah mengambil peguam untuk merangka dan menggubal kertas-kertas kausa untuk suatu tindakan undang-undang dibawa terhadap Kerajaan Malaysia, Peguam Negara dan beberapa pihak-pihak yang lain yang mana saya percaya telah membuat pendakwaan mala fide, fitnah dan salah laku dakwaan, yang kesemuanya telah dibuktikan di dalam keterangan yang dikemukakan semasa perbicaraan tuduhan jenayah terhadap saya. Tujuan saya adalah untuk mendapat gantirugi khas dan umum termasuk bayaran tunggakan gaji, ganjaran, tunggakan pencen dan kos yang ditanggung oleh saya apabila membela diri saya.

11. Semasa berurusan dengan guaman yang dicadangkan tersebut, Kerajaan Malaysia telah bersetuju untuk membuat bayaran berkenaan dengan tunggakan gaji dan ganjaran saya dan Pendakwaraya telah sekaran menarik balik rayuannya di Mahkamah Rayuan berkenaan dengan Mahkamah Sesyen Kuala Lumpur Kes Tangkap No. 61-126-2007. Terdapat juga obligasi-obligasi yang lain yang belum diselesaikan semasa ini.

Sesalinan surat daripada Polis Diraja Malaysia bertarikh 23.07.2012 dan sesalinan surat daripada Jabatan Peguam Negara yang menarik

*balik rayuan di Mahkamah Rayuan adalah sekarang dihadapkan dan ditunjukkan kepada saya dan ditanda sebagai Eksibit "**RY-5**"*

12. Saya amat percaya bahawa tidak adanya sebarang alasan untuk Pendakwaraya untuk meneruskan rayuan ini kerana Kerjaan Malaysia telah menerima keputusan-keputusan yang dibuat oleh Mahkamah Sesyen Kuala Lumpur dan Mahkamah Tinggi Kuala Lumpur berkenaan dengan Notis-Notis Ramli Yusuff dan Tuduhan-Tuduhan Ramli Yusuff. Notis-Notis bertarikh 17.07.2007 dan 16.8.2007 yang dikeluarkan oleh Timbalan Pendakwaraya terhadap Responden, Rosli Dahlan ("**Notis-notis tersebut**") adalah berlandaskan dan berdasarkan siasatan yang dibuat oleh Agensi Pencegahan Rasuah terhadap saya. Notis-notis tersebut telah dikeluarkan atas dasar bahawa Responden, Rosli Dahlan adalah 'sekutu' saya (sepertimana dinyatakan didalam Akta tersebut) dan bahawa Pendakwaraya mempunyai alasan munasabah untuk mempercayai bahawa suatu kesalahan telah dibuat dibawah Akta tersebut oleh saya. Memandangkan bahawa keputusan kedua-dua, Mahkamah Sesyen dan Mahkamah Tinggi adalah bahawa Pendakwaraya tidak mempunyai alasan munasabah untuk mempercayai bahawa saya telah melakukan kesalahan, maka ia adalah jelas bahawa Notis-Notis tersebut terhadap Responden semestinya tidak sah dan batal dari segi undang-undang

Saya mengikrarkan afidavit ini untuk merakamkan perkara-perkara yang telah berlaku dari masa Responden di dakwa dan yang mana adalah relevant and perlu untuk dibawa kepada perhatian Mahkamah Mulia ini.

Kepada suatu afidavit yang)
diikrarkan oleh seorang deponent)
DATO' PAHLAWAN)
RAMLI BIN YUSUFF diikrarkan)
Pada 1 AUG 2012 di *Puchong, Selangor D.E.*)
[Penterjemahan tidak diperlukan]

Dihadapan saya,

PESURUHJAYA SUMPAH
No. B 401
MURALITHERAN
ART PILLAI
MALAYSIA

PESURUHJAYA SUMPAH

61, Jalan 23, Taman Bukit Kuchai
47100 Puchong,
Selangor D.E.

INDOSMEN

AFIDAVIT RESPONDEN INI setelah diikrarkan oleh by **DATO' PAHLAWAN RAMLI BIN YUSUFF** pada 1 AUG 2012 telah difailkan pada di pejabat pendaftaran Mahkamah Tinggi Malaya di Kuala Lumpur oleh Tetuan Kumar Partnership, Peguamcara & Peguambela yang mempunyai alamat penyampaian di Suite 12.01–12.02, 12th Floor, Wisma E & C, No. 2 Lorong Dungun Kiri, Damansara Heights, 50490 Kuala Lumpur
(Tel: 03-2093 3131 & Fax: 03-2092 3131) (Ref : 01.4.3422.07.RD)

TRANSLATION

PENTERJEMAHAN

MESSRS KUMAR PARTNERSHIP
ADVOCATES & SOLICITORS

IN THE HIGH COURT OF MALAYSIA AT KUALA LUMPUR

(APPELLATE DIVISION)

CRIMINAL APPEAL NO: 42 – 188 – 2010

BETWEEN

PUBLIC PROSECUTOR ....APPELLANT

AND

ROSLI BIN DAHLAN ....RESPONDENT

RESPONDENT'S AFFIDAVIT

I, **DATO PAHLAWAN RAMLI BIN YUSUFF (NRIC No: 520229-03-5375)** a Malaysian citizen of full age and with an address for service at residing atC-20-5, Dataran 32, No. 2, Jalan 19/1, 46300 Petaling Jaya, do hereby sincerely and truly affirm and say as follows:-

1. I am an advocate and solicitor of the High Court of Malaya and am currently practicing with the law firm of Messrs Ramli Yusuff & Co.

2. Save where stated to the contrary, the facts deposed to herein are within my personal knowledge or derived from documents and records

in my possession. My affidavit also sets out information which I verily believe to be true and the sources and grounds thereof.

3. I joined the Royal Malaysian Police Force in 1970. I have since then been an active career police officer. I was interdicted sometime on 2.11.2007 whilst I was holding the rank of Deputy Police Commissioner and the position as Director Commercial Crimes, Bukit Aman.

The Investigation

4. I was investigated by the Anti-Corruption Agency, now known as the Malaysian Anti-Corruption Commission ("**MACC**") as a result of which I was served with two (2) Notices ("**the Ramli Yusuff's Notices**") issued pursuant to Section 32(1) of the Anti-Corruption Act, 1997 ("**the Act**").

*There is now produced and shown to me a copies of the Ramli Yusuff'Notices and marked as Exhibit "**RY-1**" and "**RY-2**".*

5. I responded to the Ramli Yusuff Notices by means of Statutory Declaration of my assets. Despite the disclosures, the MACC brought three (3) charges against me vide Kuala Lumpur Sessions Court Arrest Case No. 61-31-2007 ("**the Ramli Yusuff Charges**"). The essence of

the charges was that I had failed to comply with the Ramli Yusuff Notices.

*There is now produced and shown to me the charge sheet with respect to Kuala Lumpur Sessions Court Arrest Case No. 61-31-2007 and marked as Exhibit "**RY-3**".*

6. On 10.3.2010, the Learned President of the Kuala Lumpur Sessions Court hearing my case held that the prosecution had failed to make out a prima facie case against me and ordered my discharge and acquittal on all of the Ramli Yusuff Charges. In coming to his findings, the Learned President held, inter alia:-

6.1 the Ramli Yusuff Notices have been issued improperly by the Public Prosecutor without reasonable grounds for believing that I had committed an offence under the Act; and

6.2 the Ramli Yusuff Notices are therefore invalid and bad in law.

*There is now produced and shown to me the Grounds of Judgment in Kuala Lumpur Sessions Court Arrest Case No. 61-31-2007 with the relevant passages marked in yellow and marked as Exhibit "**RY-4**".*

7. Being dissatisfied with the decision of the Kuala Lumpur Session Court, the Prosecution lodged an Appeal vide Kuala Lumpur High Court Criminal Appeal No. 41A-35-2010. On 25.11.2011, the Learned Judge hearing the appeal found the Prosecution's appeal to be groundless and accordingly dismissed the same. The Learned Judge also found that the Ramli Yusuff Notices were invalid and bad in law.

8. The Public Prosecutor also preferred one (1) charge under Section 16 of the Act vide Kota Kinabalu Sessions Court Arrest Case No. 61 – 13 – 2007 for use of public office for gratification to wit issuing directions for the use of a Police Cessna Aircraft to view lands in which I allegedly had an interest in. The Kota Kinabalu Sessions Court found that the Public Prosecutor did not establish a prima facie case against me and ordered that I be discharged and acquitted. The Public Prosecutor had appealed against this decision to the High Court of Kota Kinabalu which appeal was dismissed on12.5.2010. A further appeal by the Public Prosecutor to the Court of Appeal was also dismissed on 20.6.2011.

9. I was also discharged and acquitted with respect of another charge brought against me under Section 168 of Penal Code by the Kuala Lumpur Sessions Court in Summons Case No. 61-126-2007. The Prosecution also lodged an appeal against this decision vide Kuala Lumpur High Court Criminal Appeal No. 42A-126-2010. I was also

once again discharged and acquitted with regard to this charge. Once again, the Prosecution being dissatisfied with the decision of the High Court, lodged an appeal to the Court of Appeal.

The Proposed Suit against the Government

10. After being discharged and acquitted on all the criminal charges brought against me, I engaged solicitors to formulate and draft cause papers for a suit to be brought against the Government of Malaysia, the Attorney General and several other parties who in my mind were guilty of malicious prosecution, defamation and prosecutorial misconduct, all of which was evidenced from the evidence led in the criminal charges brought against me. My intention was for relief in the form of damages both general and special including the payment of back-wages, gratuities, overdue pension payments and the legal costs that I incurred in defending myself.

11. In dealing with my proposed suit, the Government of Malaysia has agreed to pay my back-wages and gratuities, and the Public Prosecutor has now withdrawn the appeal to the Court of Appeal arising out of Kuala Lumpur Sessions Court Case No. 61-126-2007. There are other outstanding obligations which are yet to be met.

*A copy of the letter from the Royal Malaysian Police dated 23.07.2012 and a copy of the letter from the Attorney General's Chambers withdrawing the Appeal is now produced and shown to me and marked as Exhibit "**RY-5**"*

12. I verily believe that there are no reasonable grounds for the Prosecution to proceed with the instant appeal as the Government of Malaysia has accepted the decisions made by the Kuala Lumpur Session Court and the Kuala Lumpur High Court with regard to the Ramli Yusuff Notices and the Ramli Yusuff Charges. The notices dated 17.7.2007 and 16.8.2007 which were issued by the Public Prosecutor against the Respondent, Rosli Dahlan ("**the Notices**") were premised and predicated upon the investigations brought by the Anti-Corruption Agency against me. The Notices were formulated against the Respondent, Rosli Dahlan on the basis that he was my "associate" (as defined under the Act) and that the Public Prosecutor had reasonable grounds to believe that an offence under the Act had been committed by me. Since the finding of both the Sessions Court and the High Court is that the Public Prosecutor had no reasonable grounds to believe that I had committed an offence, it is trite that the Notices issued against the Respondent are equally invalid and bad in law.

I make this Affidavit as a record of the events that took place since the Respondent was charged and which are both relevant and pertinent requiring the attention of this Honourable Court.

To an affidavit by a deponent)
DATO' PAHLAWAN)
RAMLI BIN YUSUFF affirmed on)
1 AUG 2012 in ~~Kuala Lumpur~~ *Puchong, Selangor D.E.*)
[Interpretation not required]

Before me,

Commissioner for Oaths

PESURUHJAYA SUMPAH
No. B 401
MURALITHERAN
ART PILLAI
MALAYSIA

61, Jalan 23, Taman Bukit Kuchai,
47100 Puchong,
Selangor D.E.

INDORSEMENT

This **RESPONDENT'S AFFIDAVIT** having been affirmed by **DATO' PAHLAWAN RAMLI BIN YUSUFF** on 1 AUG 2012 has been filed on in the Registry of the High Court of Malaya at Kuala Lumpur by Messrs Kumar Partnership, Advocates & Solicitors of Suite 12.01–12.02, 12th Floor, Wisma E & C, No. 2 Lorong Dungun Kiri, Damansara Heights, 50490 Kuala Lumpur
(Tel: 03-2093 3131 & Fax: 03-2092 3131) (Ref : 01.4.3422.07.RD)

IDALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

(BAHAGIAN RAYUAN)

RAYUAN JENAYAH NO. 42-188-2010

ANTARA

PENDAKWA RAYA ... **PERAYU**

DAN

ROSLI BIN DAHLAN ... **RESPONDEN**

(Dalam Mahkamah Sesyen Kuala Lumpur
Kes Tangkap No. 10-62-449-2007)

SIJIL MEMPERAKUI EKSIBIT

Ini adalah eksibit bertanda **"RY-1"** dalam **AFIDAVIT RESPONDEN** yang diikrarkan oleh **DATO' PAHLAWAN RAMLI BIN YUSUFF** di hadapan saya pada haribulan 2012

- 1 AUG 2012

PESURUHJAYA SUMPAH

PESURUHJAYA SUMPAH
No. B 401
MURALITHERAN
ART PILLAI
MALAYSIA

61, Jalan 23, Taman Bukit Kuchai,
47100 Puchong,
Selangor D.E.

101

P1

541

APR 020/93

P41

BADAN PENCEGAH RASUAH MALAYSIA

NOTIS UNTUK MENDAPATKAN MAKLUMAT

Seksyen 32(1)(a) Akta Pencegahan Rasuah 1997 (Akta 575)

Kepada:-

RAMLI BIN YUSUFF
No.48, Jalan BU 4/4
Bandar Utama, Damansara
47800 Petaling Jaya, Selangor.

PADA menjalankan kuasa yang diberikan kepada Pendakwa Raya di bawah seksyen 32(1)(a) Akta Pencegahan Rasuah 1997 (Akta 575) dan terletakhak pada saya mengikut seksyen 376 (3) Kanun Tatacara Jenayah (Akta 593), saya

ANTHONY KEVIN MORAIS
Timbalan Pemgarah
Bahagian Perundangan dan Pendakwaan
Badan Pencegah Rasuah Malaysia

Timbalan Pendakwa Raya, mempunyai alasan munasabah untuk mempercayai, berdasarkan penyiasatan bahawa satu kesalahan di bawah seksyen 11(a) Akta ini berkaitan **Nombor Aduan : 098/2007** telah dilakukan oleh kamu Nombor Kad Pengenalan G/5594 dan dengan ini memberi notis menghendaki kamu supaya memberi pernyataan yang benar dan mendedahkan segala maklumat yang diketahui secara bertulis dengan bersumpah atau berikrar:-

* *Potong mana yang tidak berkenaan*

PENDAKWA RAYA * MALAYSIA * PUBLIC PROSECUTOR
Notis Sek. 32(1)(b)

(i) yang mengenal pasti tiap-tiap harta, sama ada alih atau tak alih, sama ada di dalam atau di luar Malaysia, yang dipunyai atau dimiliki oleh kamu, atau yang mengenainya kamu mempunyai apa-apa kepentingan, sama ada di sisi undang-undang atau ekuiti, dan menyatakan tarikh setiap harta yang dikenal pasti itu diperoleh, dan cara bagaimana ia diperoleh sama ada dengan jalan urus niaga, bekues, devis, pewarisan, atau apa-apa cara lain;

(ii) yang mengenal pasti tiap-tiap harta yang dihantar keluar dari Malaysia oleh kamu antara tahun 2000 hingga tahun 2007

(iii) yang menyatakan nilai anggaran dan tempat letaknya setiap harta yang dikenal pasti di bawah subperenggan (i) dan (ii), dan jika mana-mana harta itu tidak dapat diketahui tempat letaknya sebab mengapa;

(iv) menyatakan berkenaan dengan setiap harta yang dikenal pasti di bawah subperenggan (i) dan (ii) sama ada harta itu dipegang oleh kamu atau oleh mana-mana orang lain bagi pihak kamu, sama ada harta itu telah dipindahmilikkan, dijual kepada atau disimpan dengan mana-mana orang, sama ada harta itu telah susut nilainya sejak kamu memperolehnya, dan sama ada ia telah berbaur dengan harta lain yang tidak dapat dipisahkan atau dibahagikan tanpa kesukaran;

(v) menyatakan segala maklumat lain yang berhubungan dengan setiap harta yang dikenal pasti di bawah subperenggan (i) dan (ii), dan perniagaan, perjalanan atau kegiatan-kegiatan lain kamu dan,

(vi) menyatakan segala punca pendapatan, perolehan atau aset kamu.

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2. Pernyataan bersumpah atau berikrar yang tersebut di atas hendaklah diserahkan sendiri atau dengan pos berdaftar kepada saya di alamat yang tersebut di atas dalam tempoh **30 hari** dari tarikh penyampaian NOTIS ini kepada kamu.

3. **AMBIL PERHATIAN** bahawa menurut seksyen 32(2) Akta tersebut, seseorang yang dihantar kepadanya satu NOTIS di bawah seksyen 32(1) hendaklah, walau apa pun mana-mana undang-undang bertulis atau rukun undang-undang yang berlawanan, mematuhi terma NOTIS ini dalam masa yang dinyatakan di dalamnya, dan mana-mana orang yang dengan sengaja mengabaikan atau tidak mematuhi terma NOTIS ini adalah melakukan suatu kesalahan dan apabila disabitkan boleh dipenjara selama tempoh tidak kurang daripada empat belas hari dan tidak lebih daripada dua puluh tahun dan boleh didenda tidak melebihi satu ratus ribu ringgit.

Tarikh 17.7.2007

PENDAKWA RAYA * MALAYSIA * PUBLIC PROSECUTOR

Timbalan Pendakwa Raya

ANTHONY KEVIN MORAIS
Timbalan Pemgarah
Bahagian Perundangan dan Pendakwaan
Badan Pencegah Rasuah Malaysia

IDALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

(BAHAGIAN RAYUAN)

RAYUAN JENAYAH NO. 42-188-2010

ANTARA

PENDAKWA RAYA ... **PERAYU**

DAN

ROSLI BIN DAHLAN ... **RESPONDEN**

(Dalam Mahkamah Sesyen Kuala Lumpur
Kes Tangkap No. 10-62-449-2007)

SIJIL MEMPERAKUI EKSIBIT

Ini adalah eksibit bertanda **"RY-2"** dalam **AFIDAVIT RESPONDEN** yang diikrarkan oleh **DATO' PAHLAWAN RAMLI BIN YUSUFF** di hadapan saya pada haribulan 2012

1 AUG 2012

PESURUHJAYA SUMPAH

PESURUHJAYA SUMPAH
No. B 401
MURALITHERAN
ART PILLAI
MALAYSIA

61, Jalan 23, Taman Bukit Ku[illegible]
47100 Puchong,
Selangor D.E.

545
APR 020798
P2

P1/2

BADAN PENCEGAH RASUAH MALAYSIA

NOTIS UNTUK MENDAPATKAN MAKLUMAT

Seksyen 32(1)(a) Akta Pencegahan Rasuah 1997 (Akta 575)

Kepada:-

RAMLI BIN YUSUFF
No.48, Jalan BU 4/4
Bandar Utama, Damansara
47800 Petaling Jaya, Selangor.

PADA menjalankan kuasa yang diberikan kepada Pendakwa Raya di bawah seksyen 32(1)(a) Akta Pencegahan Rasuah 1997 (Akta 575) dan terletakhak pada saya mengikut seksyen 376 (3) Kanun Tatacara Jenayah (Akta 593), saya

ANTHONY KEVIN MORAIS
Timbalan Pemgarah
Bahagian Perundangan dan Pendakwaan
Badan Pencegah Rasuah Malaysia

Timbalan Pendakwa Raya, mempunyai alasan munasabah untuk mempercayai, berdasarkan penyiasatan bahawa satu kesalahan di bawah seksyen 11(a) Akta ini berkaitan **Nombor Aduan : 098/2007** telah dilakukan oleh kamu Nombor Kad Pengenalan G/5594 dan dengan ini memberi notis menghendaki kamu supaya memberi pernyataan yang benar dan mendedahkan segala maklumat yang diketahui secara bertulis dengan bersumpah atau berikrar:-

PENDAKWA RAYA
MALAYSIA
PUBLIC PROSECUTOR

* *Potong mana yang tidak berkenaan*

(i) yang mengenal pasti tiap-tiap harta, sama ada alih atau tak alih, sama ada di dalam atau di luar Malaysia, yang dipunyai atau dimiliki oleh kamu, atau yang mengenainya kamu mempunyai apa-apa kepentingan, sama ada di sisi undang-undang atau ekuiti, dan menyatakan tarikh setiap harta yang dikenal pasti itu diperoleh, dan cara bagaimana ia diperoleh sama ada dengan jalan urus niaga, bekues, devis, pewarisan, atau apa-apa cara lain;

(ii) yang mengenal pasti tiap-tiap harta yang dihantar keluar dari Malaysia oleh kamu antara tahun 2000 hingga tahun 2007

(iii) yang menyatakan nilai anggaran dan tempat letaknya setiap harta yang dikenal pasti di bawah subperenggan (i) dan (ii), dan jika mana-mana harta itu tidak dapat diketahui tempat letaknya sebab mengapa;

(iv) menyatakan berkenaan dengan setiap harta yang dikenal pasti di bawah subperenggan (i) dan (ii) sama ada harta itu dipegang oleh kamu atau oleh mana-mana orang lain bagi pihak kamu, sama ada harta itu telah dipindahmilikkan, dijual kepada atau disimpan dengan mana-mana orang, sama ada harta itu telah susut nilainya sejak kamu memperolehnya, dan sama ada ia telah berbaur dengan harta lain yang tidak dapat dipisahkan atau dibahagikan tanpa kesukaran;

(v) menyatakan segala maklumat lain yang berhubungan dengan setiap harta yang dikenal pasti di bawah subperenggan (i) dan (ii), dan perniagaan, perjalanan atau kegiatan-kegiatan lain kamu dan,

(vi) menyatakan segala punca pendapatan, perolehan atau aset kamu.

2. Lanjutan masa yang dipohon untuk Pernyataan bersumpah atau berikrar atas Notis di bawah Seksyen 32(1)(a) Akta Pencegahan Rasuah 1997 yang telah diserahkan kepada kamu pada 17 Julai 2007 adalah dibenarkan dan hendaklah diserahkan sendiri atau dengan pos berdaftar kepada saya di alamat yang tersebut di atas dalam tempoh **30 hari** dari tarikh penyampaian NOTIS ini kepada kamu.

3. **AMBIL PERHATIAN** bahawa menurut seksyen 32(2) Akta tersebut, seseorang yang dihantar kepadanya satu NOTIS di bawah seksyen 32(1) hendaklah, walau apa pun mana-mana undang-undang bertulis atau rukun undang-undang yang berlawanan, mematuhi terma NOTIS ini dalam masa yang dinyatakan di dalamnya, dan mana-mana orang yang dengan sengaja mengabaikan atau tidak mematuhi terma NOTIS ini adalah melakukan suatu kesalahan dan apabila disabitkan boleh dipenjara selama tempoh tidak kurang daripada empat belas hari dan tidak lebih daripada dua puluh tahun dan boleh didenda tidak melebihi satu ratus ribu ringgit.

Tarikh 16.8.2007

PENDAKWA RAYA * MALAYSIA * PUBLIC PROSECUTOR

Timbalan Pendakwa Raya

ANTHONY KEVIN MORAIS
Timbalan Pengarah
Bahagian Perundangan dan Pendakwaan
Badan Pencegah Rasuah Malaysia

IDALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

(BAHAGIAN RAYUAN)

RAYUAN JENAYAH NO. 42-188-2010

ANTARA

PENDAKWA RAYA ... **PERAYU**

DAN

ROSLI BIN DAHLAN ... **RESPONDEN**

(Dalam Mahkamah Sesyen Kuala Lumpur
Kes Tangkap No. 10-62-449-2007)

SIJIL MEMPERAKUI EKSIBIT

Ini adalah eksibit bertanda **"RY-3"** dalam **AFIDAVIT RESPONDEN** yang diikrarkan oleh **DATO' PAHLAWAN RAMLI BIN YUSUFF** di hadapan saya pada haribulan 2012

1 AUG 2012

PESURUHJAYA SUMPAH

PESURUHJAYA SUMPAH
No. B 401
MURALITHERAN
ART PILLAI
MALAYSIA

61, Jalan 23, Taman Bukit Kuchai,
47100 Puchong,
Selangor D.E.

12

(Mahkamah 114)
(Courts 114)

TANAH MELAYU/*MALAYA*

Dalam Mahkamah Sesyen / Majistret di Jalan Duta, Kuala Lumpur
In the Sessions / Magistrate's Court at

Saman/*Summons* No./*No.* ____ tahun 19____/*of 19*

Waran/*Warrant* No./*No.* ____ tahun 19____/*of 19*

Tangkapan/*Arrest* No./*No.* 01-31 tahun 19 07/*of 19*

Borang ini tidak boleh dipakai sekiranya dua orang atau lebih dipertuduhkan bersama.
This form is not to be used where two or more persons are charged jointly.

Kertas Pertuduhan/*Charge Sheet*

Nama orang yang dituduh / *Name of accused*: RAMLI BIN YUSUFF (G/5594)

Alamat orang yang dituduh / *Address of accused*: No. 33, JALAN PJU 3/12C, DAMANSARA INDAH RESORT HOMES, PETALING JAYA, SELANGOR

Pertuduhan/*Charge:*

Kes Diperuntukkan Kepada Mahkamah Sesyen J .....

- Seperti di lampiran -

b/p Hakim Kanan
Mahkamah Sesyen
Kuala Lumpur.

**Semua butir-butir yang ditanda demikian mestilah ditandatangan ringkas oleh dua orang yang membuat catatan.*
All items so marked must be initialled by the person making the entry.

Tarikh Saman dikembalikan (jika waran, tinggalkan kosong) *Return date of summons (If warrant, leave blank:)*	19____	Pukul *Time*	pagi *a.m.*
Tarikh Saman/Waran dikeluarkan *Date of issue of Summons/Warrant* 19____	Tandatangan pihak berkuasa mengeluarkan *Signature of issuing authority*		Yang Dipertua/*President* Pendaftar/*Registrar* Majistret/*Magistrate*

JANGAN TULIS DALAM RUANGAN INI *DO NOT WRITE IN THIS MARGIN*

Untuk digunakan dalam kes-kes Waran dan tangkap sahaja.
For use in Warrant and arrest cases only.

Butir-butir jaminan Polis yang ditawarkan: *Particulars of Police bail offered:*	Tarikh dikembalikan *Return date*		Banyaknya *Amount* $	Penjamin/*Surety* Penjamin-penjamin/*Sureties*
Jaminan Polis diambil pada *Police Bail taken on* 19____ 19				

Nama pengadu (jika ada) *Name of complainant (if any)*	AZMI BIN ISMAIL	Tarikh pengaduan *Date of complainant*	2.4.2007	Nilai yang dikatakan bagi harta yang terlibat *Alleged value of property involved*	
Alamat pengadu (jika ada) *Address of complainant (if any)*	Aras 1, Blok D6, Ibu Pejabat BPR Putrajaya, Putrajaya				

Jika pertuduhan dipinda pada bila-bila masa, sahkan butir-butir pertuduhan yang dipinda dan masukkan di sini tarikh pindaan
If the charge is amended at any stage, endorse particulars of the amended charge and insert here the date of amendments

Tarikh ditangkap *Date of arrest*	1/11/07	Tarikh hadir kali pertama *Date of first appearance*	1/11/07	Keturunan orang yang dituduh *Nationality of accused*	Melayu	Umur orang yang dituduh *Age of accused*	55

Rayuan *Plea*		Butir-butir Jaminan *Particulars of Bail*		Bon Jamin No. *Bail Bond No.*	A 180813 1-11-0

Waran Menahan No. dan tarikh dikeluarkan *Remand Warrant No. and date of issue*		Jika kemudiannya jaminan diberi, tarikh dilepaskan *If bail subsequently given, date of release*		Catatan *Remarks*

Peguam atau pegawai pendakwa *Prosecuting Advocate or officer*	TPR MOHAMAD JAZAMUDDIN	Peguam pembela *Defending Advocate*	

Penangguhan *Adjournments*			Pendapat *Findings*
Hingga (tarikh) *To (date)*	Sebab † *Reasons*	*Tandatangan ringkas Initial*	
			Sabitan yang dahulu (melainkan jika tiada catatkan butir-butirnya) *Previous convictions and evidence of character (Unless nil, endorse particulars)*
			Rayuan untuk meringankan hukuman (melainkan jika tiada catatkan butir-butirnya) *Plea in mitigation (Unless nil, endorse particulars)*
			Hukuman dan/atau lain-lain perintah dan/atau bon *Sentence and/or other order and/or bond* Lepas dan dibebaskan

†Jika panjang catatkan.
If long endorse.

Tarikh menamatkan pembicaraan *Date of termination of proceedings*	12 MAR 2010		Ditandatangan *Signed* GUNALAN A/L MUNIANDI HAKIM MAHKAMAH SESYEN KUALA LUMPUR Yang Dipertua/*President* Majistret/*Magistrate*
Resit denda No. *Fine Receipt No.*		Waran Mempenjarakan No. *Warrant of Commitment No.*	

(Mahkamah 115)
(Courts 115—Rev. 1/78)

15

Lembaran Sambungan No. ....dalam Kes Saman / Waran / Tangkap No..... tahun 19.....

Continuation Sheet No. *Summons / in Warrant / Arrest Case No.* *of 19*

L—JPN. AS.

PERTUDUHAN PERTAMA

PR lawan Ramli bin Yusuff (G/5594)

" ~~Bahawa kamu pada 17hb. September~~ 2007, di Pejabat Timbalan Pendakwa Raya, Ibu Pejabat Badan Pencegah Rasuah Malaysia, Putrajaya, dalam Wilayah ~~Persekutuan Putrajaya, sebagai seorang yang dikehendakki oleh~~ Pendakwa Raya melalui Notis bertulis di bawah seksyen 32(1)(a) Akta Pencegahan Rasuah 1997 ~~bertarikh 17hb. Julai 2007, yang mana Notis tersebut telah dilanjutkan~~ tempoh masa pada 16hb.Ogos 2007 dan tamat pada 19hb. September 2007 yang menghendakki kamu memberikan ~~pernyataan benar secara bertulis dengan bersumpah~~ berkenaan tiap-tiap harta samada alih atau tak alih, yang dimiliki oleh kamu atau yang kamu ~~mempunyai kepentingan dan segala punca pendapatan dan~~ perolehan, telah tidak mematuhi terma-terma Notis tersebut iaitu, kamu melalui pernyataan bertulis secara bersumpah ~~bertarikh 17hb. September 2007 telah tidak~~ mendedahkan maklumat berkenaan harta yang kamu mempunyai kepentingan iaitu:-

1. Ruang pejabat, Lot 144, Seksyen 44, Petak 128, Tingkat 4, bangunan M1-B, ~~hakmilik Strata Geran 37731/M1-B/4/128,~~ Bandar Kuala Lumpur (Unit B-3A-9,Megan Avenue II, Jalan Yap Kwan Seng, 50450 Kuala Lumpur)

2. Ruang pejabat, Lot 144, Seksyen 44, Petak 127, Tingkat 4, bangunan M1-B, hakmilik Strata Geran 37731/M1-B/4/127, Bandar Kuala Lumpur ~~(Unit B-3A-8, Megan Avenue II, Jalan Yap Kwan Seng, 50450 Kuala Lumpur)~~

~~dimana harta-harta tersebut semasa~~ perolehan bernilai RM 1,032,840.00 (Ringgit: Satu Juta Tiga Puluh Dua Ribu dan Lapan Ratus Empat Puluh Sahaja) yang dipegang oleh ~~dua orang pengarah Bonus Circle Sd. Bhd.~~, iaitu Rohmah @ Hasmah binti Yusoff yang merupakan kakak kamu dan Roslina binti Mohd. Yusoff yang merupakan adik kamu, ~~dan dengan demikian kamu telah melakukan~~ satu kesalahan yang boleh dihukum di bawah seksyen 32(2) Akta Pencegahan Rasuah 1997 "

Ibu Pejabat BPR Aduan No. 098/2007

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PERTUDUHAN KEDUA

PR lawan Ramli bin Yusuff (G/5594)

" Bahawa kamu pada 17hb. September 2007, di Pejabat Timbalan Pendakwa Raya, Ibu Pejabat Badan Pencegah Rasuah Malaysia, Putrajaya, dalam Wilayah Persekutuan Putrajaya, sebagai seorang yang dikehendakki oleh Pendakwa Raya melalui Notis bertulis di bawah seksyen 32(1)(a) Akta Pencegahan Rasuah 1997 bertarikh 17hb. Julai 2007, yang mana Notis tersebut telah dilanjutkan tempoh masa pada 16hb.Ogos 2007 dan tamat pada 19hb. September 2007 yang menghendakki kamu memberikan pernyataan benar secara bertulis dengan bersumpah berkenaan tiap-tiap harta samada alih atau tak alih, yang dimiliki oleh kamu atau yang kamu mempunyai kepentingan dan segala punca pendapatan dan perolehan, telah tidak mematuhi terma-terma Notis tersebut iaitu, kamu melalui pernyataan bertulis secara bersumpah bertarikh 17hb. September 2007 telah tidak mendedahkan maklumat berkenaan saham milik kamu dalam PERMAJU INDUSTRIES BERHAD sebanyak 154,000 unit dan dengan demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 32(2) Akta Pencegahan Rasuah 1997 "

Ibu Pejabat BPR Aduan No. 098/2007

Jangan tulis di ruang ini
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Mahkamah Sesyen (1) Kuala Lumpur

Kes Tangkap No. 61-31-2007

PP lawan Dato' Ramli b. Yusuff (G/5594)

PERTUDUHAN TAMBAHAN (KETIGA)

"Bahawa kamu pada 17hb September 2007, di Pejabat Timbalan Pendakwa Raya, Ibu Pejabat Badan Pencegah Rasuah Malaysia, Putrajaya, dalam Wilayah Persekutuan Putrajaya, sebagai seorang yang dikehendaki oleh Pendakwa Raya melalui Notis bertulis di bawah seksyen 32(1)(a) Akta Pencegahan Rasuah 1997 bertarikh 17hb Julai 2007, yang mana Notis tersebut telah dilanjutkan tempoh masa pada 16hb Ogos 2007 dan tamat pada 19hb September 2007 yang mengkehendaki kamu memberikan pernyataan benar secara bertulis dengan bersumpah berkenaan tiap-tiap harta samada alih atau tak alih, yang dimiliki oleh kamu atau yang kamu mempunyai kepentingan dan segala punca pendapatan dan perolehan, telah tidak mematuhi terma-terma Notis tersebut iaitu, kamu melalui pernyataan bertulis secara bersumpah bertarikh 17hb September 2007 telah tidak mendedahkan maklumat berkenaan saham milik kamu dalam TELEKOM MALAYSIA sebanyak 20,000 unit dan dengan demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 32(2) Akta Pencegahan Rasuah 1997.

Ibu Pejabat BPR Aduan No. 098/2007

14/1/2008

ABDUL RAZAK B. MUSA
Timbalan Pendakwa Raya
Badan Pencegah Rasuah Malaysia

IDALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

(BAHAGIAN RAYUAN)

RAYUAN JENAYAH NO. 42-188-2010

ANTARA

PENDAKWA RAYA ... **PERAYU**

DAN

ROSLI BIN DAHLAN ... **RESPONDEN**

(Dalam Mahkamah Sesyen Kuala Lumpur
Kes Tangkap No. 10-62-449-2007)

SIJIL MEMPERAKUI EKSIBIT

Ini adalah eksibit bertanda **"RY-4"** dalam **AFIDAVIT RESPONDEN** yang diikrarkan oleh **DATO' PAHLAWAN RAMLI BIN YUSUFF** di hadapan saya pada haribulan 2012

01 AUG 2012

PESURUHJAYA SUMPAH

PESURUHJAYA SUMPAH
No. B 401
MURALITHERAN
ART PILLAI
MALAYSIA

61, Jalan 23, Taman Bukit Kuchai,
47100 Puchong,
Selangor D.E.

351

AY-4

MALAYSIA

WLAYAH PERSEKUTUAN KUALA LUMPUR

DALAM MAHKAMAH SESYEN KUALA LUMPUR

PERBICARAAN JENAYAH NOMBOR: 61-31-2007

PENDAKWARAYA

LAWAN

RAMLI BIN YUSUF

GROUNDS OF JUDGMENT

1st. Charge

"Bahawa kamu pada 17hb. September 2007, di Pejabat Timbalan Pendakwa Raya, Ibu Pejabat Badan Pencegah Rasuah Malaysia, Putrajaya, dalam Wilayah Persekutuan Putrajaya, sebagai seorang yang dikehendakki oleh Pendakwa Raya melalui Notis bertulis di bawah seksyen 32(1)(a) Akta

Pencegahan Rasuah 1997 bertarikh 17hb. Julai 2007, yang mana Notis tersebut telah dilanjutkan tempoh masa pada 16hb. Ogos 2007 dan tamat pada 19hb. September 2007 yang menghendakki kamu memberikan pernyataan benar secara bertulis dengan bersumpah berkenaan tiap-tiap harta samada alih atau tak alih, yang dimiliki oleh kamu atau yang kamu mempunyai kepentingan dan segala punca pendapatan dan perolehan, telah tidak mematuhi terma-terma Notis tersebut iaitu, kamu melalui pernyataan bertulis secara bersumpah bertarikh 17hb. September 2007 telah tidak mendedahkan maklumat berkenaan harta yang kamu mempunyai kepentingan iaitu:-

1. Ruang pejabat, Lot 144, Seksyen 44, Petak 128, Tingkat 4, bangunan M1-B, hakmilik Strate Geran 37731/M1-B/4/128, Bandar Kuala Lumpur (Unit B-3A-9, Megan Avenue II, Jalan Yap Kwan Seng, 50450 Kuala Lumpur.)

2. Ruang pejabat, Lot 144, Seksyen 44, Petak 127, Tingkat 4, bangunan M1-B, hakmilik Strata 37731/M1-B/4/127, Bandar Kuala Lumpur (Unit B-3A-8, Megan Avenue II, Jalan Kwan Seng, 50450 Kuala Lumpur).

Dimana harta-harta tersebut semasa perolehan bernilai RM1,032,840.00 (Ringgit: Satu Juta Tiga Puluh Dua Ribu dan Lapan Ratus Empat Puluh Sahaja) yang dipegang oleh dua orang pengarah Bonus Circle Sdn. Bhd., iaitu Rohmah @ Hasmah binti

Yusoff yang merupakan kakak kamu dan Roslina Binti Mohd. Yusoff yang merupakan adik kamu, dan dengan demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 32(2) Akta Pencegahan Rasuah 1997".

2nd. Charge

"Bahawa kamu pada 17hb. September 2007, di Pejabat Timbalan Pendakwa Raya, Ibu Pejabat Badan Pencegah Rasuah Malaysia, Putrajaya, dalam Wilayah Persekutuan Putrajaya, sebagai seorang yang dikehendakki oleh Pendakwa Raya melalui Notis bertulis di bawah seksyen 32(1)(a) Akta Pencegahan Rasuah 1997 bertarikh 17hb. Julai 2007, yang mana Notis tersebut telah dilanjutkan tempoh masa pada 16hb. Ogos 2007 dan tamat pada 19hb. September 2007 yang menghendakki kamu memberikan pernyataan benar secara bertulis dengan bersumpah berkenaan tiap-tiap harta samada alih atau tak alih yang dimiliki oleh kamu atau yang kamu mempunyai kepentingan dan segala punca pendapatan dan perolehan, telah tidak mematuhi terma-terma Notis tersebut iaitu, kamu melalui pernyataan bertulis secara bersumpah bertarikh 17hb. September 2007 telah tidak mendedahkan maklumat berkenaan saham milik kamu dalam PERMAJU INDUSTRIES BERHAD sebanyak 154,000 unit dan dengan demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 32(2) Akta Pencegahan Rasuah 1997".

3rd. Charge

"Bahawa kamu pada 17hb. September 2007, di Pejabat Timbalan Pendawa Raya, Ibu Pejabat Badan Pencegah Rasuah Malaysia, Putrajaya, dalam Wilayah Persekutuan Putrajaya, sebagai seorang yang dikehendaki oleh Pendakwa Raya melalui Notis bertulis di bawah seksyen 32(1)(a) Akta Pencegahan Rasuah 1997 bertarikh 17hb. Julai 2007, yang mana Notis tersebut telah dilanjutkan tempoh masa pada 16hb. Ogos 2007 dan tamat pada 19hb. September 2007 yang mengkehendaki kamu memberikan pernyataan benar secara bertulis dengan bersumpah berkenaan tiap-tiap harta samada alih atau tak alih, yang dimiliki oleh kamu atau yang kamu mempunyai kepentingan dan segala punca pendapatan dan perolehan, telah tidak mematuhi terma-terma Notis tersebut iaitu, kamu melalui pernyataan bertulis secara bersumpah bertarikh 17hb. September 2007 telah tidak mendedahkan maklumat berkenaan saham milik kamu dalam TELEKOM MALAYSIA sebanyak 20,000 unit dan dengan demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 32(2) Akta Pencegahan Rasuah 1997.

The Accused (A) was acquitted and discharged of the above charges at the close of the case for the prosecution (P.P) without being called upon to enter on his defence. The PP. has appealed against this decision.

Facts

The material facts are mainly undisputed. This case has its beginning on 17.07.2007 upon the service of a Notice To Disclose Information of Property under Section 32(1) of the Anti-Corruption Act, 1997 ["ACA 1997"] on A on 07.07.2007. [See Exhibit P. 1]. Exhibit P. 1 was issued by the Deputy Public Prosecutor ["DPP"] named therein [PW. 34]. This was followed by the issuance of another similar notice by PW. 34. [Exhibit P. 2], which is the relevant notice pertaining to the present charges, upon A's request in writing for extension of time. A complied with Notice P. 2 by duly filing a Declaration of Assets dated [Exhibit P. 4] and serving it on PW. 34 on 17.09.2007, which was well within the stipulated deadline.

Exhibit P. 1 was issued by PW. 34 acting under the powers vested in the Public Prosecutor ("P.P") pursuant to S.32(1) of ACA '97 purportedly on the belief that there existed reasonable grounds that A. had committed an offence under S. 11(a) of the Act, based specifically on "No. Aduan : 098/2007 [Exhibit P. 8].

On 01.11.2007, A. was arrested and voluntarily gave a Statement Of Accused under S.45(3), ACA, 1997' [Exhibit D. 11]. Whether a prima-facie case has been made out against A. on the charges preferred against him would be essentially a matter of interpretation of the undisputed facts and relevant documents.

Ingredients Of the Charges

1. That Notices Exhibits P. 1 and P. 2 were valid and lawful under S. 32(1) of the ACA. 1997;
2. That the Notices were served on A;
3. That A failed to comply with the terms of the Notices as per the particulars in the charges; and
4. That the said non-compliance amounts to wilful neglect or failure to disclose the matters required to be declared.

Prima-Facie case

What constitutes a prima-facie (p.f.) case has now been clearly defined in Section 173(h) (iii) of the Criminal Procedure Code, which states that:

> *"A prima-facie case is made out against the accused where the prosecution has adduced credible evidence proving each ingredient of the offence which if unrebutted would warrant a conviction".*

The learned Deputy Public Prosecutor (DPP) submits that with the introduction of the above sub-paragraph the "maximum evaluation" test that requires proof beyond reasonable doubt at this stage ceases to apply. In my view, this amendment does not change the position under the principle enunciated in leading authorities such as Balachandran v. P.P. [2005]

2MLJ.301 and Looi Kow Chai v. PP [2003] 1CLJ 734 that the PP's evidence should be subjected to a maximum evaluation.

Be that as if may, it is trite law that at the instant stage the burden of proof lies wholly on the PP to prove its case and does not shift to A to prove his innocence or provide any explanation. The PP. bears the onus to prove each and every essential element of the offence charged through only credible evidence and not just any kind of evidence.

Where there is substantial reliance on circumstantial evidence to implicate A., it must point irresistibly to A's guilt and not open itself to other possibilities. It is also trite law that where several inferences can be drawn from this kind of evidence the inference most favourable to A. must be drawn. In Tan Chai Keh v. PP. [1948-490] MLJ. Supp at pg. 108, it was held:

> *"... where there is more than one inference which can reasonably be drawn from a set of facts in a criminal case we are of opinion that the inference most favourable to the accused must be adopted". (Per Spencer Wilkinson.J.)*

Validity Of The Notices [Exhibit P. 1 and P. 2]

This is the threshhold issue in this case. The defence has strenuously challenged the validity of Exhibits P. 1 and P. 2, in particular the peculiar circumstances which prompted PW. 34 to issue Exhibit P. 1. Through an in-depth cross-examination of PW. 34 evidence was elicited that brought

into question the validity and correctness of PW. 34's exercise of discretion in issuing P. 1. Of particular concern was the sufficiency of grounds for PW. 34's act in issuing the notice at that point in time. Suffice to say that from PW. 34's account itself Exhibit P. 1 was issued under rather strange circumstances in that it was based purely on the unsubstantiated and unsupported allegation by a complainant of dubious character and who had antecedents, having engaged in a string of criminal activities, including prostitution and illegal gaming. This person, by the name of Moi Sai Chin [MSC] was placed under preventive detention at the time of the complaint. His report did not implicate A. but several police officers. Apparently, in his section 112 CPC. statement MSC. alleged that A. had personally received bribes from him witnessed by a named friend of his some eight years ago. This was allegedly followed by monthly payments to A. over a period of years. No reasonable explanation was forthcoming as to why he had remained silent for such a long duration or why he had suddenly decided to lodge a complaint after the long lapse.

PW. 34's justification that MSC had suddenly been overcome by conscience seemed rather casual and incredible considering MSC's background and character. Contrary to what was asserted by PW. 34 in cross-examination that he not only had MSC's bare allegation but also documentary proof against A., none of the documentary evidence produced by PW. 34 implicated A. in any respect whatsoever. PW. 34 had only obtained bank statements of account of a company said to be owned by MSC. showing amounts regularly debited from the account. There was not even an iota of evidence showing that any of these sums had actually been

received by A. or credited into A's account. More importantly, investigations did not appear to have been fully, properly and fairly carried out, such as interviewing the witnesses named and obtaining essential documents, to ascertain whether A. had actually received any bribe at all from MSC as alleged, considering that this was the only factual basis for issuance of Exhibit P. 1. Needless to say, the information relied upon by PW. 34 appeared to be far from convincing or reliable apart room being unsupported and unsubstantiated by documentary evidence.

The statutory power to issue a notice under S.32(1) of the ACA 1997 is no doubt at the subjective satisfaction of the issuing authority. Nevertheless, it is not an absolute or arbitrary power but has to be exercised strictly within the ambit of this section as it has far-reaching implications on the fundamental liberties of the subject recipient. Of particular importance is the existence of stiff penal sanctions for non-compliance.

I agree that based on the authorities as regards the acceptable standard for the exercise of such a power, the actual exercise of it must be objectively justifiable to be in conformity with the requirements of S. 32(1) ACA 1997. It is plain and explicit from a reading of S. 32(1) that a notice thereunder is to be issued if, and only if, there exist reasonable grounds, based on investigations carried out by an officer of the Agency to believe that an offence under the Act. ("the predicated offence") had been committed. A mere suspicion, however strong, of such an offence having been committed, would certainly not, in law, amount to reasonable grounds for the said belief. There is no dearth of authorities for the proposition that

legislation affecting the fundamental liberty of a subject must be strictly construed. [Ng Hong Chan v. Timbalan Menteri Hal Ehwal Dalam Negeri. [1994] 4CLJ.47. The principle as regards a decision making authority is well summarized as follows:

> *"It is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and remote".*

The question that arose from PW. 34's evidence itself is whether he had applied his mind before deciding to issue Exhibit P.1 and P. 2 which were purportedly issued as a result of investigations into an offence under S.11(a) of ACA '97 following a report [Exhibit P. 8] by an ACA. investigating officer [PW. 3] PW. 3 had no personal knowledge whatsoever of the facts alleged therein but merely relied on the complaint by MSC, Aduan I/Pej. No. 075/2007 [Exhibit D.159]. In Exhibit P. 8, PW. 3 merely says no more than that A was suspected to have engaged in corrupt practice and to own properties beyond his means from income derived from the corrupt practice in the course of his official duties. The key word here is 'suspicion'. More importantly there is no mention whatsoever of any investigation having been carried out which is an express requirement of S.32(1). In fact, PW.3 himself admitted that while lodging P. 8 he did not know anything about the contents therein apart from MSC's bare allegation that, presumably, had not been inquired into further.

There is nothing in the law to suggest that a S.32(1) notice by the DPP. cannot be challenged in a criminal trial as to its validity. The issue of setting aside the notice, which is only within the jurisdiction of the High Court, is a separate issue. It is settled law that in interpreting a penal statute, observance of due process and procedural justice are paramount. The judgment in the case of PP. v. Tan Sri Muhammad b. Muhd. Taib [1999] 2MLJ. 305 clearly implies that a notice to declare assets of this nature is open to challenge, if "there was some evidence suggesting that it was improperly or irregularly issued". There was ample evidence to this effect in the instant case. For the same reason, the presumption under S.114(e) of the Evidence Act that the notice was properly issued after a complete investigation has no application as its validity has been seriously challenged on grounds that had merit.

In the final analysis, the evidence of PW.1, PW. 3. and particularly that of PW. 34 obtained through cross-examination together with the documentary evidence exhibited considered in their totality indicate manifestly that at the material time no sufficient and reasonable grounds existed to justify the belief that A. had committed an offence under S.11(a) of ACA, 1997. Investigations appeared to be ongoing at that point in time. Hence, I found that Exhibit P. 1 and P. 2 were invalid and bad in law for non-compliance with the express requirements of S.32(1)(a), ACA 1997 and thus, cannot found the present charges which ought to be held groundless. The reasons given by PW.34 for his satisfaction and belief that A. had committed the predicated offence were, in my finding, insufficient and unconvincing. This is regardless of whether PW. 34 had acted mala-fide in

issuing the notices which need not be addressed at this stage even though he appeared to have exercised his discretion in a rather casual manner by relying on the report of an officer who had hardly carried out any investigation. This officer had not even produced an iota of evidence that A. had actually received any bribe from MSC.

On the premise that this Court has no jurisdiction to go behind the notices and inquire into their validity, the Court has to determine whether all the other essential elements of the charges have been proved through credible evidence sufficient enough to warrant a conviction if unrebutted.

Issues Arising

As it was undisputed that notices P. 1 and P. 2 had been duly served on A., the first issue would be in respect of the third ingredient common to all the charges, which is, whether A. had failed to comply with the terms of the notices as set out specifically in the charges? If so, the next issue would be whether the said non-compliance was through wilful neglect or failure?

First Charge

In relation to the first issue of non-compliance with Exhibit P.1 and P. 2, this charge reads that A. had failed to disclose information regarding two immoveable properties, the particulars of which are set out therein, in which he had an interest. It does not state specifically what kind of interest was being referred which a charge ought to specify. [See sections 152-153, Criminal Procedure Code]. This is also not consistent with the wording of

32(1), ACA. 1977, which does not require any or every kind of interest in properties to be declared but is confined purely to "interest, whether legal or equitable". Reading this provision together with the charge, the issue for determination was only whether A. could be considered to have had an equitable interest in the properties at the material time, the reason being that the question of legal interest did not arise at all in this case. This is based on the fact that the properties were never at any time registered in his name, the legally registered owner since the date of purchase being a private limited company by the name of Bonus Circle Sdn. Bhd. ["BC"]. Possession and ownership ownership were retained all throughout by BC and never shifted to A. Similarly, from the circumstances of this case, the question of beneficial interest too did not arise, there being no evidence to this effect.

A company is a separate legal entity having a legal personality distinct from its directors and shareholders. Under our land law (National Land Code) pertaining to the rights of the registered titleholder, BC has an indefeasible title and right to the properties to the exclusion of all others, including the directors and shareholders. A being neither a shareholder nor director in BC was in law merely a third party.

What then is equitable interest and could A be said to have held such an interest despite the fact that BC. was and remained the registered owner of the properties throughout the impugned period? The bulk of the evidence adduced in respect of the present charge was aimed at proving that A. was

actively and extensively involved in the management of BC since its inception. A did not deny this on the ground that PW. 16 and PW. 18, his sisters, were not competent to do so and as such, he was concerned about protecting their interests as well as that of BC. [See Statement Exhibit D.11]. This was in accord with the evidence of PW. 17, a leading prosecution witness who explained the reasons behind A's decision to set up BC, made on his [PW. 17's] advice and A's concern for the well being of his family in the event of unforeseen circumstances.

As the properties, being immoveable, were in the possession and ownership of BC at all material times, the explicit terms of Exhibit P.1 and P. 2 required A. to only disclose information of any "interest, whether legal or equitable", in the two pieces of property. The learned DPP. submitted that 'interest' as in the charge should be read widely and liberally to include administering the business of a limited company. However no legal authority was cited in support of this proposition. Managing the affairs of a registered company would not, in my view, translate into the person concerned having any rights, ownership or interest in its properties or assets. The principle in the House of Lords case of Macaura v. Northern Assurance Co. Ltd. [1925] AC 619 is particularly on all fours with the facts of the instant case. It was held in that case:

> *"Neither a creditor of nor a shareholder of a company has any property, legal or equitable, on the property of a company and therefore, neither has an insurable interest in any particular asset of the company, and this is so even though the debt due*

from the company to the creditor is a very large sum and the shareholder is practically the sole shareholder of the company".

[See also Fawziah Holdings Sdn. Bhd. v. Metramac Car Sdn. Bhd. & Anor. Appeal [2006] 1MLJ 505]. This court has to decide whether the facts and evidence relied upon by PP. regarding the role of A. in the affairs of BC. come within the ambit of equitable interest in the properties owned by BC. "Equitable interest" cannot be any kind of general interest in the ordinary sense of the phrase. It is a specific legal term having its own connotations and ramifications. It naturally has to be an interest or claim in real estate, as in this case, recognized by the law of equity. However, no evidence whatsoever was adduced to prove that A. had any interest of this kind, or even beneficial interest, in the said properties, which had been fully transferred and registered in the name of BC. It is trite law that where statute law, such as the NLC, governs ownership and transfer of real estate by registration, equitable principles would not apply. In any case, the onus was on the PP. to prove that despite the properties having been duly registered in the name of a separate legal entity (BC) equitable interest in favour of A. nevertheless continued to exist in the properties. However, there were no facts on record attesting to this assertion. On the contrary, evidence from key prosecution witnesses indicated that after arranging for the purchase of the properties A. did not intend to and in fact, did not retain any further interest or claim whatsoever in them.

Apart from having actively participated in the administration of BC., the most important fact to be considered was that A. had paid for the properties by way of reimbursement to PW. 17 who had issued his own cheques for

the purchase. PW. 17 provided a reasonable explanation for this arrangement. Subsequently, A converted a portion of his advances to BC. to shares in the name of PW. 16 and PW. 18 while the balance remained with BC. The basis of PP's contention that A. continued to have an interest in these properties is that there was circumstantial evidence pointing to A's intention for them to be held only temporarily by BC or his sisters and subsequently to be transferred back to A. Hence, that the purchase using his own funds was purely and ultimately to benefit himself in the long term. The PP. sought to use the facts relating to a company called Kinsajaya ("KJ") in Sabah to assert that there was similar fact evidence ("SFE") showing A's design and purpose in the instant case. It is settled law that the party who asserts the existence of a certain fact bears the onus of proving its existence [Section 103, Evidence Act, 1950]. However, there was no attempt to show the existence of any 'striking similarity and underlying unity' between the facts of this case and those relating to KJ., which should have been done to invoke the doctrine of "SFE". Be that as it may, there was ample evidence in the instant case coming from vital and material witnesses themselves that BC was set up solely for the welfare and benefit of A's family, particularly his sisters and aged parents, in the future should anything untoward befall him in the line of duty. In this context, the purchase of the two properties was at the suggestion of PW. 17 to generate a steady income for BC. It was on record and undisputed that A. derived no benefit whatsoever, whether pecuniary or otherwise, from BC. or the said properties. This in turn is wholly consistent with A's defence raised in the PP's case itself that he had no beneficial interest at all in or further claim to these assets of BC.

PW. 16 and PW. 18 were categorical in their testimonies that the purpose of setting up BC. was as above, i.e., for their future. The learned DPP challenged their evidence principally on the issue of whether it was A. or PW. 17 who was the prime mover in setting up the company and appointing them as directors. There was no doubt that some contradiction arose in their evidence on this point. But, it was never suggested to them that ownership of BC. and the two properties in question was intended to revert to A. and that, they were merely holding the same for A. temporarily. This was crucial for the learned DPP to argue that such was A's intention similar to that relating to KJ. Without having done so, this argument merely from the Bar had no evidential basis and thus, was groundless. In any event, the facts relating to BC. ran counter to this argument. There is ample authority for the principle that evidence of similar facts should be excluded unless it is shown that the evidence has a really material bearing to the issues being tried in the instant case. [See R v. Raju & Ors. [1952] 1 LNS. 99]. The evidence, at its height, may have established that A. contributed to and actively participated in the affairs of BC. But this does not, in law, translate into A. having rights to or interest in the fixed assets of the company, including properties. At the most, A. could be considered to have had an interest in the management and profitability of the company, but certainly not in its properties which the evidence itself showed were for the benefit of his sisters. Therefore, this vital ingredient of the charge has not been established.

On the assumption that A could be considered to have held an 'equitable interest' in the properties as alleged, I would proceed to consider whether 'wilful neglect or failure' to disclose this interest had been established.

'Wilful neglect or failure' implies some form of 'mens rea' in refusing to disclose a certain fact. From this phrase it is beyond doubt that this is not a strict liability offence. Mere failure or neglect without the necessary intention would not be sufficient to establish this essential ingredient. The onus was on the PP. to show that there existed circumstances from which it could be safely inferred that A. intentionally failed or neglected to make the disclosure. However, in addition to the legal ownership of the properties having been duly registered in the name of BC. from the outset, the weight of evidence pointed to the beneficial interest in these company assets being held only by PW. 16 and PW. 18 as shareholders and directors. Neither was there any circumstantial evidence leading to an irresistible inference that the properties were meant to revert to A's ownership and that he had deliberately refused to disclose that the source of funding for the purchase was himself. For the record, the properties have remained under the registered ownership of BC. since 1999 without even an iota of evidence of any attempt at change of ownership.

This is not a case where the facts were plain and clear that A had the kind of interest as envisaged in Exhibits P. 1 and P. 2 such that any non-disclosure of the interest, if any, could be regarded as willful or intentional. In fact, there was substantial evidence pointing to the contrary in view of, inter alia, ownership and control being held entirely by BC., a separate

legal entity. Hence, the evidence taken on its face value itself, together with A's explanation to be found in his cautioned statement [Exhibit D.11] negative the allegation that he had willfully failed or neglected to make the disclosure in question.

In his evidence, PW. 17 explained why he had paid for the properties using his own cheques, i.e., to obtain a substantial discount from the vendor. A then reimbursed him in full. This fact is not hidden as the defence introduced the cheques issued by A. to PW.17. [See Exhibit D.19.A.1-A.5 and A.7-A.11]. PW. 17's explanation was not challenged or contradicted and thus, it must be deemed to be accepted that this arrangement had a certain purpose and not designed to conceal the purchase having actually been financed by A. The TPR contented that as A. had advanced or loaned a sum of RM1.03 million for this purchase, the properties should have been disclosed in his sworn statement. However, as submitted by defence counsel, it is explicit from the clear terms of Exhibit P. 1 and P. 2 read with the provisions of S. 32(1)(a) ACA. 1997, that there is no duty imposed on a recipient of the notice to disclose property which has been purchased for another party as a gift, based on natural love and affection, in which he does not retain any kind of interest, claim or right. It was further submitted that, in any event, the said advance of more than RM1.03 million to BC. should have been declared in Exhibit P. 4. Again, as rightly pointed out by the defence, this is irrelevant to the current charges, which only allege non-disclosure of interest in the properties, and therefore, is outside the scope and ambit of the charges, As such, it cannot be

considered in deciding the issue of 'wilful neglect or failure' in respect of these charges.

The entire case of the PP. as regards this element depends on circumstantial evidence which obviously does not lend itself to any inference being drawn that A had willfully failed or neglected to declare the said interest as alleged. The key word in so far as this element is concerned is 'wilfully'. There is ample authority that it imports into the act or omission an element of intention or deliberateness. In Ng Chwee Poh v. PP [1997] 2 MLJ., the definition of the term by Lord Russell of Killowen in Senior [1899] IQB.283, at pg. 290, was adopted, as follows:

> *"Wilfully means that the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it".*

In Rajinder Kumar v. State of Punjab, AIR.1966 SC. 1322, it was held:

> *"wilfully... imports into the intention or knowledge inherent in 'neglects or fails' the element of contumacious deliberateness. However, willfulness like intention or knowledge cannot be evidenced directly and is thus an inference to be drawn from the facts that are proved".*

In my finding, from the facts and circumstances relating to the acquisition and ownership of the two properties in question, particularly the grave doubts and ambiguity as to whether A. retained any further interest in them, the only fair and proper inference from the proven facts would be that

the alleged non-disclosure, if at all there was any, was far from "wilful" within the established meaning of the word. Contrary to the case for the PP. this, in fact, is the irresistible "inference to be drawn from the facts that are proved".

2nd. Charge

As regards the 3rd. ingredient, namely, that A. had failed or neglected to disclose his ownership of Pemaju Industries Bhd. ("Pemaju") shares, the dispute was only as to the quantity of Pemaju shares owned by him at the material time and not the ownership itself.

From the evidence of the relevant witnesses and the available documentary evidence relating to the share transaction, particularly the Alliance Investment Bank Bhd. ["AIBB"] Client Movement Form, the fact of ownership of only 100,000 Pemaju shares in A's account as at the date of service of Exhibit P. 1 (17.07.2007) was undisputed. Hence, the evidence of failure or neglect to disclose ownership of Pemaju shares was only to the extent of 100,000 units and not 154,000 as per charge. In the event, the crucial issue that arose was in respect of the fourth ingredient, namely, whether the failure or neglect was "wilful".

To prove this charge, the PP. relied principally on the evidence of their vital witness (PW. 21), the remisier who undertook the trading. However, from the totality of PP's evidence itself, particularly that of PW. 21 considered together with the relevant documents, there arose grave doubts as to whether A. actually had any knowledge of the purchase of these shares.

Apart from PW. 21's confirmation of the ownership as above, he was a witness whose credibility was negligible, Hardly any weight or credit could be attached to his evidence on the essential issues relating to the purchase of Pemaju shares in view of the many inconsistencies and contradictions in his testimony. To be noted were several irregularities in his handling of A's CDS account. Inter-alia, he had not attested A's signature to the opening of the account contrary to the documentary evidence produced in court, such as the CDS. application forms. [Exhibit P. 136 and P. 137 A-B]. These forms had been duly signed by A. on 8.9.1999 but the CDS. account had not been opened until 21.01.2002 during which period no trading was done on the account. The date of opening (21.01.2002) was the same date on which the first order to purchase the Pemaju shares was made. The order was made by telephone purportedly by A. but this could not be confirmed as PW. 21 had not spoken to or met A. for more than 2 years. Payment was done either through cheques issued by PW. 21 himself and reimbursed by an unknown third party or through cheques issued by the third party. But, PW. 21 was certain that the cheques were not issued by A. The sequence of events leading to the eventual purchase was nothing short of being highly unusual and controversial without any credible explanation.

To summarize, it could not be concluded from PW. 21's testimony that it was A. who had placed the order but it could be confirmed that none of the payments was made by him and neither was any receipt issued to him. An inference could reasonably be drawn that a third party may have made the purchase using A's trading account. Needless to say, PW. 21's conduct in

this whole episode was highly irregular and open to suspicion of manipulation of the account together with an unknown third person.

Coming now to the question of knowledge of ownership of the above shares, there was an obvious failure to prove that the relevant Contract Notes [Exhibit D.140 A-D] and Official Receipts [Exhibit P. 143A-C] as well as the Bursa Statements had been sent to A's correct address at the material time. On the contrary, some of these documents carried the wrong address in which A. had yet to reside or was no longer residing. Apart from the Contract Notes and Official Receipts bearing the phrase "Duplicate Copy" without any explanation, throughout the alleged service of these documents there was evidence that he was no longer residing in Kuala Lumpur until 02.05.06. This was apparent from his service records [Exhibit P. 13] that clearly show that from 15.11.2001-02.05.2006, he was serving outstation, first as Commissioner of Police, Sabah and then as Chief Police Officer (CPO), Pahang. The evidence indicating the possibility of A. not having received these documents was consistent with his stance in Exhibit P.4 that he had no knowledge of the transactions concerning the Pemaju shares in his KLCS account.

As regards the Bursa Statement of Accounts [Exhibit P. 146 A-M], according to the relevant witness from Bursa (PW. 25), posting was outsourced to a third party called Datapost. Even though the statements carry A's correct address at the material time, PW. 25 had no knowledge whatsoever whether Datapost had actually posted Exhibit P. 146A-M to A's current address at that time. In short, there was no proof of posting of

Exhibit P. 146A-M to A which is vital for any presumption of knowledge on A's part of these documents. In fact, PW. 25 himself confirmed that it was usual for gunny sacks of the half-yearly statements like Exhibit P. 146 B-M to be returned to Bursa for non-delivery. Without proof of posting, the presumption under S.114(e)-(f), Evidence Act, 1950 would certainly not apply. The state of the evidence being such, there was absolutely nothing on record to contradict A's stand in his statement to BPR. [Exhibit P.11] that he was shocked to see ownership of 100,000 units of Pemaju shares in his Bursa Statement of Account dated 30.10.2007 whereas his Alliance Investment Bank Bhd. ["AIBB"] Statement relating to the same account showed only RM5.57 in his favour. Material witnesses for PP. themselves confirmed that A. could not be faulted for having the impression that his share ownership was as per P.11

An important fact is that in A's Declaration to the TPR. [Exhibit P.4] he had enclosed a Statement of Account from AIBB [Exhibit P.142]. It was undisputed that this account related to the very same account in which the Pemaju shares were held. This statement shows a balance of RM5.57 only after all the transactions had been carried out. A fair inference would be that A. may have had the impression that this was the actual balance in his favour. Notwithstanding that P. 142 did not give a true picture of ownership the fact that A. had exhibited this statement could by itself prove that A. had no intention to conceal the share transactions, including the Pemaju counter, undertaken in this account.

Contrary to establishing 'wilful' neglect or failure' by A, the facts and circumstances of this case itself negative the allegation that the failure or neglect by A. to declare his ownership of these shares was 'wilful'. As a result, the 4th. vital ingredient of this charge had not been proved as it could not be concluded that A. had knowledge of the said quantity of Pemaju shares in his account.

Third Charge

Issues in dispute relate to the 3rd. and 4th. ingredients. A. does not deny owning the shares ("The TM shares"). A placed the order for the shares on 13.09.2007 and became owner only on 19.09.07. Issue was whether A. actually owned these shares at the material time and if so, whether he had wilfully neglected or failed to disclose the ownership as alleged?

On 17.09.07 A. had served his Declaration [Exhibit P. 4] in compliance with Notice P. 2. As at this date he had yet to own the TM. shares. The charge states that he had failed to disclose this ownership on 17.09.07 when in fact he had then yet to own the shares. Hence, this charge is manifestly groundless irrespective of whether the operative date of disclosure is the date of service of Exhibit P. 1 and P. 2 on the accused, i.e., 17.07.2007. In any event, the only fair and reasonable interpretation of the terms of Exhibit P. 1 and P. 2 read with the recipient's obligations under the provisions of S.32(1), ACA. 1997 would be that this is the effective or "cut-off" date for disclosure. Any other construction would be illogical and perhaps, also unjust. In the circumstances, the question of "wilful neglect or failure' to

disclose does not arise at all as there is not even evidence of ownership of the property itself on the date in question. This apart from the fact that Exhibit P. 1 and P. 2 have failed to specify an effective date for disclosure, particularly whether properties acquired after 17.07.07 need to be disclosed. Hence, the 3rd. and 4th. ingredients of the charge have obviously not been established.

Finding

In conclusion, based on the foregoing analysis, I found that the PP. had failed to adduce sufficient and credible evidence to prove each and every ingredient of the offence charged in respect of all 3 charges, which, if unrebutted or unexplained, would warrant a conviction. A prima-facie case had, therefore, not been made out against A within the definition in S.173(h)CPC. I, accordingly, ordered A to be acquitted and discharged of all the charges without calling upon him to enter on his defence.

Dated: 5th. April 2010

(GUNALAN A/L MUNIANDY)
Hakim
Mahkamah Sesyen
Kuala Lumpur

IDALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

(BAHAGIAN RAYUAN)

RAYUAN JENAYAH NO. 42-188-2010

ANTARA

PENDAKWA RAYA ... **PERAYU**

DAN

ROSLI BIN DAHLAN ... **RESPONDEN**

(Dalam Mahkamah Sesyen Kuala Lumpur
Kes Tangkap No. 10-62-449-2007)

SIJIL MEMPERAKUI EKSIBIT

Ini adalah eksibit bertanda **"RY-5"** dalam **AFIDAVIT RESPONDEN** yang diikrarkan oleh **DATO' PAHLAWAN RAMLI BIN YUSUFF** di hadapan saya pada haribulan 2012

1 AUG 2012

PESURUHJAYA SUMPAH

PESURUHJAYA SUMPAH
No. B 401
MURALITHERAN
ART PILLAI
MALAYSIA

61, Jalan 23, Taman Bukit Kuchai,
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Selangor D.E.

CAWANGAN PERKHIDMATAN
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50560 KUALA LUMPUR

Telefon : 03-22668151
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Rujukan : KPN 51/22

Tarikh : 23 Julai, 2012

Y.Bhg. Dato' Ramli bin Yusuff
No. 33, Jalan PJU 3/12C
Damansara Indah Resort Homes
47410 Petaling Jaya
Selangor

Y.Bhg. Dato',

CEK BAYARAN BALIK GAJI/EMOLUMEN
G/5594 Y.BHG DATO' RAMLI BIN YUSUFF

Adalah dengan hormatnya saya merujuk Y.Bhg. Dato' kepada perkara tersebut di atas.

2. Sukacita dimaklumkan, bersama-sama ini disertakan tiga (3) keping cek seperti berikut:-

2.1. Cek Affin Bank Bhd. No. 347613 bertarikh 20 Julai, 2012 berjumlah RM 669,978.67 **(Ringgit Malaysia Enam Ratus Enam Puluh Sembilan Ribu Sembilan Ratus Tujuh Puluh Lapan Dan Sen Enam Puluh Tujuh);**

2.2. Cek Affin Bank Bhd. No. 347612 bertarikh 20 Julai, 2012 berjumlah RM 47,668.22 **(Ringgit Malaysia Empat Puluh Tujuh Ribu Enam Ratus Enam Puluh Lapan Dan Sen Dua Puluh Dua Sahaja) dan**

2.3. Cek PBB No. 201971 bertarikh 20 Julai, 2012 berjumlah RM 35,402.45 **(Ringgit Malaysia Tiga Puluh Lima Ribu Empat Ratus Dua Dan Sen Empat Puluh Lima Sahaja)**

...2/-

3. Untuk makluman, bersama-sama ini juga disertakan butir-butir pembayaran faedah-faedah persaraan untuk semakan Y.Bhg. Dato'.

Sekian, terima kasih.

` BERKHIDMAT UNTUK NEGARA'

Saya yang menurut perintah,

(DATO' MOHD NIZAR BIN MOHD ALI) SAC
Ketua Penolong Pengarah Pengurusan
(Perkhidmatan)
b.p. Ketua Polis Negara
Polis Diraja Malaysia

JABATAN PEGUAM NEGARA, MALAYSIA
(ATTORNEY-GENERAL'S CHAMBERS, MALAYSIA)
BAHAGIAN PERBICARAAN DAN RAYUAN
(APPELATE AND TRIALS DIVISION)
ARAS 5, NO. 45, LOT 4G7
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62100 PUTRAJAYA

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Ruj. Kami : PRM (RMR) 419/2011
Tarikh : 12 Julai 2012

Pendaftar
Mahkamah Rayuan Malaysia
Tingkat 2, Istana Kehakiman
Presint 3
62506 Putrajaya

Tuan,

MAHKAMAH RAYUAN MALAYSIA RAYUAN JENAYAH NO. W-06B-74-12/2011
(Mahkamah Tinggi Kuala Lumpur Rayuan Jenayah No: 42A-126-2010)

Pendakwa Raya ... Perayu

Dan

Dato' Ramli bin Yusuff ... Responden

Bersama-sama ini dikepilkan 4 salinan Notis Penarikan Balik Rayuan berhubung dengan perkara di atas untuk makluman dan tindakan selanjutnya.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah.

(MANOJ KURUP)
Timbalan Pendakwa Raya
Unit Rayuan, Bahagian Perbicaraan & Rayuan
b.p Peguam Negara, Malaysia

17 JUL 2012
SHAFEE & CO.

s.k. 1. Timbalan Pendaftar
Mahkamah Tinggi (Jenayah) Kuala Lumpur
Kompleks Mahkamah Kuala Lumpur
Jalan Duta
50592 Kuala Lumpur

2. Tetuan Shafee & Co
Peguambela & Peguamcara
Chambers Twenty-Five
No 25, Jalan Tunku, Bukit Tunku
50480 Kuala Lumpur

(Sila catatkan rujukan fail pejabat ini apabila berhubung)

DALAM MAHKAMAH RAYUAN MALAYSIA

RAYUAN JENAYAH NO. W-06B-74-12/2011

DI ANTARA

PENDAKWA RAYA ... PERAYU

DAN

DATO' RAMLI BIN YUSUFF ... RESPONDEN

(Dalam Perkara Rayuan Jenayah No. 42A-126-2010
dalam Mahkamah Tinggi Malaya di Kuala Lumpur

DI ANTARA

PENDAKWA RAYA

DAN

DATO' RAMLI BIN YUSUFF)

NOTIS PENARIKAN BALIK RAYUAN

Pendakwa Raya kerana tidak berpuas hati dengan keputusan Yang Arif Hakim Dato' Mohamad Zabidin bin Mohd Diah yang diberikan di Mahkamah Tinggi Kuala Lumpur pada 25 November 2011 setelah berhasrat hendak merayu adalah dengan ini memberikan notis bahawa beliau tidak berhasrat untuk meneruskan lagi rayuannya.

Bertarikh pada 12 Julai 2012

(DATUK TUN ABD MAJID TUN HAMZAH)
Timbalan Pendakwa Raya

Salinan kepada :

1. Timbalan Pendaftar
Mahkamah Tinggi Kuala Lumpur
Kompleks Mahkamah Kuala Lumpur
Jalan Duta
50592 Kuala Lumpur

Alamat penyampaian bagi Perayu ialah:

Pendakwa Raya
Kamar Peguam Negara
Aras 5, No. 45, Lot 4G7, Presint 4, Persiaran Perdana
62100 Putrajaya