

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
FEDERAL COURT CIVIL APPEAL NO. 66 OF 1976

B E T W E E N :

CAPTAIN KAMARUL AZMAN BIN
JAMALUDDIN

Appellant

- and -

- (1) LIEUTENANT COLONEL WAN ABDUL
MAJID BIN ABDULLAH (PRESIDENT,
GENERAL COURT-MARTIAL)
 - (2) MAJOR RAJA MOHAR BIN RAJA
SULAIMAN
 - (3) MAJOR GOH SENG TOH
 - {4} CAPTAIN FRANCIS HILARY DIAS
 - {5} CAPTAIN SIM KIAN PING
(MEMBERS, GENERAL COURT-MARTIAL) Respondents
-
-

RECORD OF APPEAL

Bartletts de Reya,
199 Piccadilly,
London W1V 0AT.

Solicitors for the Appellant

Stephenson Harwood,
Saddlers' Hall,
Gutter Lane,
Cheapside, EC2V 6BS.

Solicitors for the Respondent

R E C O R D

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3.	Affidavit of Col. Ahmad Hj. Kadir and Exhibits thereto	7th May 1976
4.	Affidavit of Co. Shahrudin bin Mohd. Ali (in part)	6th May 1976
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18.	Affidavit of Captain Kamarul Azman bin Jamaludin	10th September 1977
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IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
FEDERAL COURT CIVIL APPEAL NO. 66 OF 1976

B E T W E E N :

CAPTAIN KAMARUL AZMAN BIN
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Appellant

- and -

- 10 (1) LIEUTENANT COLONEL WAN ABDUL
MAJID BIN ABDULLAH (PRESIDENT,
GENERAL COURT-MARTIAL)
(2) MAJOR RAJA MOHAR BIN RAJA
SULAIMAN
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(4) CAPTAIN FRANCIS HILARY DIAS
(5) CAPTAIN SIM KIAN PING
(MEMBERS, GENERAL COURT-MARTIAL) Respondents
-
-

RECORD OF APPEAL

20

No. 1

Affidavit of Kamarul Azman - 3rd March
1976

In the High
Court

No. 1
Affidavit of
Kamarul Azman
3rd March
1976

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING SUMMONS NO. 88 OF 1976

In the Matter of an Application by Captain
Kamarul Azman bin Jamaludin for leave to
apply for an Order of Prohibition

And

30

In the Matter of the General Court Martial
convened to try Captain Kamarul Azman bin
Jamaludin

Captain Kamarul Azman bin Jamaludin Applicant

In the High
Court

A F F I D A V I T

No. 1
Affidavit of
Kamarul Azman
3rd March
1976
(cont'd)

I, Captain Kamarul Azman bin Jamaludin a Malaysian Citizen of full age of No. 6 Jalan Telawi 7, Kuala Lumpur affirm and say as follows:

1. I am the Applicant herein.
2. On the 16th day of February, 1976 I was brought before the General Court Martial (hereinafter referred to as the Tribunal) to be tried for forgery for the purpose of cheating under Section 38 of the Malay Regiment Enactment (F.M.S. Cap 42) hereinafter referred to as the said Enactment and for making a fraudulent service document contrary to Section 22(1) of the said Enactment. 10
3. In accordance with Rule 36(1) of the Rules of Procedure (Army) 1956 hereinafter referred to as the said Rules my then Counsel Datuk Balwant Singh offered the plea to the jurisdiction to the Tribunal.
4. Rules 7-13 of the said Rules provide that only my Commanding Officer could investigate the said charges preferred against me. 20
5. Section 124(7) of the said Enactment defines a Commanding Officer as the officer for the time being in command of the Regiment and Section 117A of the said Enactment states that 'any officer may be attached to any unit or detachment of the armed forces and while he is so attached the officer commanding such unit or detachment shall be deemed to be his Commanding Officer'. 30
6. I refer to a photostat copy of Sulit Darihal Anggota dated 8th December, 1973 and marked "CKA 1" which shows that on 31st October 1973 I was posted out of my unit 3 PDR (Peninjau Di Raja) and transferred to X list on 1st November, 1973. The X list is the list to which personnel who are sent on courses are attached to. In the said exhibit "CKA 1" it was specially instructed that I was to undergo Helikopter training at TUDM, Kuala Lumpur (Tentera Udara Di Raja Malaysia) and that I was to be attached to the said TUDM, Kuala Lumpur base from the date of change. 40
7. I am advised by my Solicitors and I verily believe that my specific attachment to the TUDM, Kuala Lumpur base expired from the end of August, 1974 and that I automatically thereafter reverted to the command under the X list.

8. On 7th October, 1974 on the direction of one Mohd. Yunus bin Mohd. Tasi, Commanding Officer RMAF Base, Kuala Lumpur one Captain Osman bin Mohamad Din recorded the Summary of Evidence in respect of the said charges purportedly pursuant to the said rules 7-13. A photostat copy of the said Summary of Evidence is annexed herewith and marked "CKA 2".

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(cont'd)

10 9. I am advised and I verily believe that the Base Command of TUDM, Kuala Lumpur was not my Commanding Officer when he investigated or caused the Summary of Evidence to be taken on the said charges against me on 7th October, 1974 as "CKA 1" is clear as to the date of expiry of my posting to the RMAF Base at Kuala Lumpur.

20 10. I am further advised and I verily believe that it is one of the canons of law that even if there is any ambiguity as to the termination of my attachment to the RMAF Base Kuala Lumpur which ambiguity is denied, then such ambiguity should and must be construed in my favour as I am the accused.

11. On hearing the Submissions of my then Counsel and the Prosecuting Counsel the Tribunal rejected my plea to jurisdiction and ordered the General Court Martial to proceed. I am advised and I verily believe that the Tribunal was wrong in rejecting my plea to jurisdiction.

30 12. My then Counsel Datuk Balwant Singh discharged himself from my case on the 25th day of February, 1976. The Tribunal informed me on the said date that the said Tribunal would proceed on the 1st day of March, 1976. I forthwith retained my present Counsel Mr. R.K. Nathan who on the 1st day of March, 1976 applied to the said Tribunal to raise anew the plea to jurisdiction on the following grounds.

40 (a) Fresh evidence had come to light in the form of Siri No. 41 dated 21st December, 1973 a copy of which is annexed herewith and marked "CKA 3" which showed specifically at Page 2 that I was only attached to the TUDM, Kuala Lumpur from 1st November, 1973 to August, 1974. No doubt my Counsel informed the Tribunal that I was only able to get sheet 1 and 2 of the said exhibit and requested the Court's assistance to require the Prosecution who have access to all army circulars and directions to obtain the complete exhibit. The Court marked the exhibit as 1 D but rejected
50 my Counsel's request stating that it was my duty to obtain same.

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I am advised and I verily believe that it was the duty of the Tribunal to have called for such a circular in the interest of justice.

(b) It was further argued on my behalf that the Ketua Turus Tentera Darat had realised the existence of the ambiguity as to who was my Commanding Officer on the date of commencement of investigations by issuing out a letter dated 12th February, 1976 a photostat copy of which is annexed herewith and marked "CKA 4". The said exhibit shows an attempt to anti-date my liability which I am advised is against all principles of natural justice. In the event that the said exhibit was not intended the to anti-date my liability then I am advised and verily believe that it establishes the existence of an ambiguity which should have been given in my favour. 10 (sic)

(c) The recent decision of the Federal Court in the case of Kee Peng Kwan vs. Colonel V.N. Stevenson & Ors. (1975) 2 MLJ 139 which had canvassed all these points was referred on my behalf. The Tribunal which is a Court of Subordinate Jurisdiction failed and or refused to be bound by the said decision contrary to the principle of stare decisis. 20

(d) It was further argued on my behalf that the composition of the Tribunal itself was subject to challenge in that there had been non compliance with Rules 28(2) and 34(2) of the Rules of Procedure (Army) 1956. 30

Rule 28(2) reads as follows:-

"If there is a judge advocate, the oath shall be administered by him to the president first and afterwards to each member of the Court. If there is no judge advocate, the oath shall be first administered by the president by any member of the Court already sworn". (sic)

Rule 34(2) reads as follows:-

"Subject to Rule 28(2) every oath shall be administered at a court-martial by the president, a member of the Court or the judge advocate". 40

In my case the entire Tribunal was sworn by a person who was called the Tuan Guru. In fact pursuant to the said rules cited above the Judge Advocate who was present should have sworn the President and the members. The Army Act 1955,

Section 93(3) which has the force of law in Malaysia by virtue of Section 44 A of the Malay Regiment Enactment reads.

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"The oath required to be administered under this Section shall be in the prescribed form and shall be administered at the prescribed time by the prescribed person and in the prescribed manner".

10 It is therefore a mandatory requirement that the oath should have been administered only by the person authorised by the law i.e. the Judge Advocate and not by the Tuan Guru.

(e) It was further argued on my behalf that there was non compliance with Rule 51 which reads:

"An oath shall be administered to each witness in accordance with Rule 34 before he gives evidence and in the presence of the accused".

20 The person who administered the oath to the witnesses in my case was again the Tuan Guru and I am advised and verily believe that as the oath was not properly taken and in breach of an express rule I would be unable to apply to impeach the credibility of any witness if it becomes necessary as he was not properly sworn.

In spite of the fact that Rule 77 was read to the Tribunal which reads:

30 "It shall be the duty of the President to ensure that the trial is conducted in accordance with the Act and these rules and in a manner befitting a Court of Justice.."

The said Tribunal rejected this ground. However on the 2nd day of March, 1976 when the case was continued the witness was sworn by a member of the Tribunal and not the Tuan Guru. This further strengthens my belief that the Tribunal have accepted what I had sworn to above.

40 (f) It was expressly argued on my behalf with a view to plea to jurisdiction that there had been non compliance with Rule 7 of the said Rules which reads:

"Subject to paragraphs 3 and 4 of this Rule when a Commanding Officer investigates a charge he shall first read and if necessary explain the charge to the accused and shall then (a) hear the evidence .."

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In this context I refer to "CKA 2" annexed herewith which shows that nowhere is there a charge specified and nor was it read. The case of Kee Peng Kwan v. Colonel V.N. Stevenson & Ors. (1975) 2 MLJ 139 as tried by the Court of First Instance wherein Mr. Justice Abdul Hamid at Page 140 Paragraphs H/I stated:

"The Appellant did not seem to challenge the first limb of Rule 7 which initially requires the Commanding Officer to read and if necessary explain the charge to the accused and then, (only then) hear the evidence himself..." 10

was also read to the Tribunal to show that it was a prerequisite that there must be a charge which must be read to the accused and these arguments were brushed aside by the Tribunal. I am advised that this point raised by His Lordship Mr. Justice Abdul Hamid was not reversed by the Federal Court.

(g) I again refer to "CKA 2" Page 5 i.e. the evidence of Captain Mohan Singh and in particular to his last and last but one paragraphs. 20

I am advised and I verily believe that as the entire summary does not show that the Commanding Officer attended the said enquiry to give evidence then the statement of Captain Mohan Singh (whose signature I was alleged to have forged) relating to the said 2 paragraphs should not have been included in the summary as being hearsay evidence. I am further advised and I verily believe that the basic tenets of law of evidence requires nay, it demands that such hearsay evidence be excluded. Further it was also the complainant who had made such hearsay evidence and all the more it should have been rejected. 30

I also refer to Page 6 of "CKA 2" which states that I admitted to the said Mohan Singh that I traced his signature. This again I am advised and verily believe should not have been admitted as they fall within the ambit of the rule of evidence relating to admissions and confessions and that as the Tribunal is governed by the Rules of Procedure in England these alleged statements of mine should be proved to have fallen within the Judge Rules relating to admissions in that it must be proved to have been made without duress threat or promise of gain. 40

I am advised and verily believe that by admitting such statements as are contained in Page 5 and 6 of the "CKA 2" I have been prejudiced in 50

the eyes of the Tribunal. I must add that the said Summary was only handed to the Judge Advocate and to the President.

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1976
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Further I am advised that Rule 7 of the said rules allows the Commanding Officer to hear evidence not hearsay evidence.

(h) Point (g) leads me to Rule 22(1)(i) of the said Rules which reads as follows:

10 "Send to the president the charge sheet, the convening order and a copy of the summary or abstract of evidence from which any evidence which in his opinion would be inadmissible under the Act at the Court-martial has been expurgated."

The said rule specifically provides that the president be sent an expurgated version of the summary in that all inadmissible evidence should have been excluded.

20 I am therefore advised and I verily believe that this would hold me on bias with the President as he is a judge of fact.

13. In spite of all these various points of law raised on my behalf by my Counsel I was not allowed the plea to the jurisdiction. I am advised and I verily believe that there are sufficient grounds in law and in any event the laws of natural justice show that the Tribunal was wrong in rejecting my application to reopen my plea to the jurisdiction.

30 14. My request through my Counsel for an adjournment to enable me to file this Summons was initially rejected but subsequently on the next day that is on the 2nd day of March, 1976 I was informed when my Counsel made a second plea for adjournment that I could have half day of the 3rd day of March, 1976.

15. The Tribunal intends to sit again from the 3rd to the 5th and intends to complete the trial.

40 16. I am advised that the Tribunal hearing my case is proceeding without jurisdiction and any finding it may make will be void and of no effect.

17. In view of the aforesaid I humbly pray that I be given leave to apply by way of Notice of Motion for an Order of Prohibition against the Tribunal or an Order requiring the President and the members of the Tribunal to forbear from

In the High Court

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Affidavit of
Kamarul Azman
3rd March
1976
(cont'd)

proceeding with the hearing of the charge against me under Sections 38 and 22(1) of the Malay Regiment Enactment (F.M.S. Cap 42).

18. I also pray that the proceedings of the Tribunal scheduled to be heard on 3rd to 5th and any dates to be fixed thereafter be stayed until after the determination of this Application.

Affirmed at Kuala Lumpur this) Sd: Captain
3rd day of March, 1976 at) Kamarul Azman bin
11.40 a.m.) Jamaludin.

10

Before me,

Sd: Sar Chiew Lim
Commissioner for Oaths
High Court,
Kuala Lumpur.

This affidavit is filed by M/s. R.K. Nathan & Co., Solicitors for the Applicant abovenamed and whose address for service is at 7-8B, Jalan Pudu, Kuala Lumpur.

No. 2
Notice of
Motion - 16th
March 1976

No. 2

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Notice of Motion - 16th March 1976

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING SUMMONS NO. 88 OF 1976

In the Matter of an Application by Captain Kamarul Azman bin Jamaludin for leave to apply for an Order of Prohibition

And

In the Matter of Clause 1 of the First Schedule of the Courts of Judicature Act 1964

30

And

In the Matter of the General Court Martial convened to try Captain Kamarul Azman bin Jamaludin

Between

Captain Kamarul Azman bin Jamaludin Applicant

And

- | | | |
|----|--|---|
| 1. | Lieutenant Colonel Wan Abdul Majid bin Abdullah (President, General Court Martial) | In the High Court |
| 2. | Major Raja Mohan bin Raja Sulaiman | No. 2 |
| 3. | Major Goh Seng Toh | Notice of Motion - 16th March 1976 (cont'd) |
| 4. | Captain Francis Hilary Dias | |
| 5. | Captain Sim Kian Ping (Members, General Court Martial) | Respondents |

NOTICE OF MOTION

10 TAKE NOTICE that pursuant to the leave of the Honourable Mr. Justice Harun given on the 3rd day of March, 1976, the High Court in Malaya at Kuala Lumpur will be moved on Monday, the 10th day of May, 1976 at 10.00 a.m. or as soon thereafter as Counsel can be heard, by Counsel on behalf of Captain Kamarul Azman bin Jamaludin.

- 20 (i) for an Order of Prohibition prohibiting the General Court Martial or its President and Members from proceeding with the hearing of the Charge against the Applicant under Sections 38 and 22(1) of the Malay Regiment Enactment (F.M.S. Cap. 42) upon the grounds set forth in the copy of the Statement served herewith;
- (ii) for the proceedings before the General Court Martial to be stayed until after the determination of this Motion;
- (iii) for the costs of and occasioned by this Motion to be paid for.

30 AND TAKE NOTICE that upon the hearing of this Motion, the Applicant will use the Affidavit of Captain Kamarul Azman bin Jamaludin affirmed on the 3rd day of March, 1976.

Dated this 16th day of March, 1976.

.....
Applicant's Solicitors	Senior Assistant Registrar, High Court, Kuala Lumpur.

40 This Notice of Motion is filed by Messrs. R.K. Nathan & Co., No. 78-B Jalan Pudu, Kuala Lumpur, Solicitors for the Applicant abovenamed.

This Notice of Motion is intended to be

In the High Court

No. 2
Notice of Motion - 16th March 1976
(cont'd)

served on:-

1. Lieutenant Colonel Wan Abdul Majid bin Abdullah (President, General Court Martial) c/o Ministry of Defence, Kuala Lumpur.
 2. Major Raja Mohan bin Raja Sulaiman)
 3. Major Goh Seng Toh)
 4. Captain Francis Hilary Dias)
 5. Captain Sim Kian Ping)
- Members, General Court Martial of c/o Ministry of Defence, Kuala Lumpur. 10
6. Judge Advocate, Mr. Rajan Rajasooria, c/o M/s. Rajasooria & Son, No. 41 Jalan Silang Kuala Lumpur
 7. Incik Stanley Issacs, Prosecutor, Legal Department, Ministry of Defence, Kuala Lumpur. 20
 8. Attorney General, Attorney General Chambers, Jalan Raja, Kuala Lumpur.

No. 3
Affidavit of Co. Shahrudin bin Mohd. Ali (in part)
6th May 1976

No. 3

Affidavit of Col. Shahrudin bin Mohd. Ali (in part) - 6th May, 1976

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

EX-PARTE ORIGINATING SUMMONS NO. 88 OF 1976

In the Matter of an Application by Captain Kamarul Azman bin Jamaluddin for leave to apply for an order of prohibition

30

And

In the matter of Clause 1 of the First Schedule of the Courts of Judicature Act, 1964

And

In the matter of the General Court Martial convened to try Captain Kamarul Azman bin Jamaluddin

In the High Court

Between

Captain Kamarul Azman bin Jamaluddin Applicant

And

No. 3
Affidavit of
Co. Shahrudin
bin Mohd. Ali
(in part)
6th May 1976
(cont'd)

1. Lieutenant Colonel Wan Abdul Majid bin Abdullah (President, General Court Martial).
- 10 2. Major Raja Mohar bin Raja Sulaiman
3. Major Goh Seng Toh
4. Captain Francis Hilary Dias
5. Captain Sim Kian Ping
(Members, General Court Martial) Respondents

A F F I D A V I T

I colonel (udara) Shahrudin bin Ali (Air Force No. 12191) of 14 Lorong Batai Lama, Damansara Heights, Kuala Lumpur, affirm and say as follows:-

- 20 1. I am holding the appointment of Panglima Udara of Markas PANGUD. I convened the General Court Martial to try Captain Kamarul Azman bin Jamaluddin on three charges under the Malay Regiment Enactment (F.M.S. Cap. 42).
2. I read the Statement of Claim to originating Summons No. 88 of 1976 which is an application by Captain Kamarul Azman bin Jamaluddin for an order of prohibition. With regards to paragraph 3(b)(ii) and (iii) of the said statement, I have this to say:
30 It has come to be an accepted rule of practice in the Armed Forces (although this is not in print) that an oath taken by a Muslim shall be administered by a Tuan Guru. There is a full-time salaried Tuan Guru in every unit of the Malaysian Armed Forces. The President of the Court Martial in this case is a Muslim and so is another member.
3. Successive court martials in the past have made use of the Tuan Guru to administer the oath, to members of the Court and the witnesses and this practice had not been challenged.
- 40 4. This practice had become a service custom and section 110 of the Malay Regiment Enactment (F.M.S. Cap. 42) allows the duty of the president to be exercised by any other person authorised in that behalf according to the custom of the service.

In the High Court

Section 110 aforesaid reads as follows:-

No. 3
Affidavit of
Co. Shahrudin
bin Mohd. Ali
(in part)
6th May 1976
(cont'd)

"Any power or jurisdiction given to, and any act or thing to be done by, to or before any person holding any military office may be exercised by, or done by, to or before any other person for the time being authorised in that behalf according to the custom of the service, or according to Rules made under Section 52 of this Enactment".

10

5. The text of the oath is a standard one applicable without distinction to all court martials. It is not the words of the Tuan Guru. In administering the oath, the Tuan Guru does nothing more than to ask the taker of the oath to repeat after him the words in the text which is handed down to him by the President.

6. The former defence counsel of the applicant, Datuk Balwant Singh was aware of the non-compliance of this particular rule of procedure but in his wisdom did not think it necessary to raise any objection presumably because he did not think the non-compliance would occasion a miscarriage of justice.

20

7. With regards to paragraph 3(b)(i) of the said statement of Captain Kamarul Azman, I have this to say:-

FURTHER PAGES NOT PRINTED.

No. 4
Notes of
Evidence
exhibited
thereto (in
part)

No. 4

Notes of Evidence exhibited thereto (in part)

30

PW4 PHANG KOK CHAI

Affirmed states in English. I am the document examiner attached to the Department of Chemistry, Petaling Jaya. I have been subpoenaed to appear before this Court Martial to give my expert opinion.

Prosecution

The prosecution is submitting a set of specimen signature and I would like to compare it with

40

a signature appearing on 1D12 (on the front) of this witness is to give him professional opinion. I am applying for the release of 1D12 into the custody of PW2 till reconvening of this Court Martial on 25th February, 1976 to enable to examine the documents.

In the High Court

No. 4
Notes of Evidence exhibited thereto (in part)
(cont'd)

Dato Balwant Singh Defence objects.

The prosecution has had sufficient time to have all this done.

10 Prosecution

Prosecuting Counsel has to present the evidence in Court. He has no knowledge of the circumstances. 1D12 to be released to PW4 [1D12 is handed to PW3] on his undertaking not to release to anybody the exhibits to bring it to Court and hand it back to the President on the 25th February, 1976 or at any such time as this General Court Martial reconvenes. Court adjourn at 4.20 p.m. to reconvene at 9.30 a.m. on 25th February, 1976.

20 25.2.1976 2.15 p.m.

Court reconvene

Applies to release PW2. Defence has no objections. Released undertakes to remain in his office in case needed.

Prosecuting Court

Prosecuting Counsel

Defence Counsel applies to discharge himself. Counsel discharged. Accused states that he is confined and he wishes to discuss with his defending officer. Accused wants ten minutes to discuss with his defending Officer-Granted.

30

Court resumes at 2.20 p.m. Capt. Mathew

D) Accused wants time to resolve the differences with Counsel retain another Counsel, or not having a Counsel at all. Request an adjournment at least two days.

Mr. Isaacs

No objections.

Adjournment granted. The accused is told that the case will proceed on the next date fixed irrespecting of whether accused has retained Counsel, or if the counsel is free.

40

PW4 is recalled. No objections by Defending Officer Moorthy.

In the High Court

No. 4
Notes of Evidence exhibited thereto (in part)
(cont'd)

PW4

I return herewith 1D12 which I took possession on the 18th February, 1976.
25.2.1976.

Court

1st March, 1976 at 9.30 a.m. at Mahkamah Tentera Mindef.
2.40 p.m.
25.2.1976.

9.45. a.m. 1.3.1976 Contd. Hearing.

10

Nathan for Defence

Applies for copy of notes of Evidence - granted 15 minutes to read the same. Adjourned until 10.15 a.m.

10.10 a.m. Defence Counsel

I have 6 preliminary objections:- Court was not properly constituted. Non compliance with RP 28(1). Swearing in not be done by President or J.A. if there is one. In this case Court was sworn in by Ustaz R.M.A.F. Rule 34(1) RP and Rule 28(1). Every oath to be by member of Court. As Court not properly constituted it had no power to hear Tharanbu and Court of M.V. Lee Mag Yen 1975 (1) MLJ Page 128 (a) P. 126. May "means must" when this is so, I apply to have Court to report to convening. Officer RP 77 - duty of President to see rules are complied with. I submit Court not properly constituted so involved.

20

Pres. Court replies

- 1) Ustaz is proper party to Administer the Oath.
- 2) Even if wrong, the mistake is purely proceeded and miscarriage of Justice.
- 3) In this case "May in 95(1) RP means May "and not must" as appears clear from the R of P.
- 4) Ustaz is Officer of this Court.

30

Def. Counsel

I maintain R.P. not complied with and Court not properly constituted.

Court adjourns for 10 minutes - reconvene at 10 minutes later.

Findings

40

- 1) If there is a defect it is only procedural and no miscarriage of Justice.
- 2) Ustaz is Officer of the Court duly authorised to Administer the Oath.
- 3) Oath was in standard form - application is rejected.

I apply for an adjournment to file a writ of prohibition.

In the High Court

Court refuses application.

No. 4
Notes of Evidence exhibited thereto (in part)
(cont'd)

Defence Counsel. submits on 2

I submit that President had copy summary of Evidence and read highly prejudicial evidence. Submit the proceedings are null and void and should be referred to convening authority.

10 Court rules

Matter was dealt with earlier, application dismissed.

Def. Counsel. submits on 3

No compliance with RP 9 (c). i.e. (1) Reading Officer should confirm that Evidence recorded was read over. non compliance RP 7 i.e. C.O. - not read charge.

Charge not read out Summary. (2)

Ref. Major Kee Case 1975 (11) MLJ Pg. 140

20 Submit that last sheet - of summary can be attached at any time. Cheah Ah Gan vs. P.P. 1958 MLJ (). Court records must be complete submit that C.M. be declared null and void.

Reply by

Plea to Jurisdiction closely dealt with. Application shall be dismissed Court must not put doubt back.

Defence Counsel. submits (4)

30 Rule 7 not complied with charge not read by C.O. to accused. Nothing on abstract to show charge read. Refers to Major Kee's case. Accused was denied justice

In the High Court

No. 5

No. 5
Affidavit of
Captain (U)
Mohan Singh
Rendhara -
6th May 1976

Affidavit of Captain (U) Mohan Singh
Rendhara - 6th May 1976

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
EX-PARTE ORIGINATING SUMMONS NO. 88 OF 1976

In the matter of an Application by Captain
Kamarul Azman bin Jamaluddin for leave to
apply for an order of prohibition.

And

In the matter of Clause 1 of the First
Schedule of the Courts of Judicature Act,
1964.

10

And

In the matter of the General Court Martial
convened to try Captain Kamarul Azman bin
Jamaluddin

Between

Captain Kamarul Azman bin Jamaluddin Applicant

And

1. Lieutenant Colonel Wan Abdul Majid
bin Abdullah (President, General
Court Martial) 20
2. Major Raja Mohar bin Raja Sulaiman
3. Major Goh Seng Toh
4. Captain Francis Hilary Dias
5. Captain Sim Kian Ping (Members,
General Court Martial) Respondents.

A F F I D A V I T

I Captain (U) Mohan Singh Rendhara (Air Force
No. 200873) of 51 Jalan Terasek Empat, Bangsar
Baru, Kuala Lumpur affirm and say:-

30

1. I am the Base Adjutant of the RMAF Base
Kuala Lumpur.

2. I read the Statement of Claim in originating
Summons No. 88 of 1976 which is an application by
Captain Kamarul Azman bin Jamaluddin for an order
of prohibition. With regards to paragraph 3(a)(ii)
and (iii) of the said statement, I have the
following to say:-

3. On the 16th February, 1976, a General Court Martial was convened to try Captain Kamarul Azman bin Jamaluddin on 3 charges under the Malay Regiment Enactment.

In the High Court

No. 5
Affidavit of
Captain (U)
Mohan Singh
Rendhara -
6th May 1976
(cont'd)

10 4. I was the officer who appointed the Base Guru Ugama to avail himself to the President of the Court for the purpose of administration of oaths to muslim members of the Court and witnesses. I did so because I was made to understand that in so far as muslims are concerned, the administration of oath at court martials is always done by the Tuan Guru.

5. Further, previous court martials have always had the services of the Base Guru Ugama and there had been no reported comment, or challenge to that.

6. With regards to the last paragraph of paragraph 12(e) of the affidavit of Captain Kamarul Azman, I have this to say:-

20 It is true that on the 2nd day of March, 1976 when the case was continued, there was no Tuan Guru in Court. This was because I was made to understand that the appointed Tuan Guru was required to officiate at a burial ceremony of a soldier on that day. However on the insistence of the Prosecuting Counsel, a substitute Guru Ugama was made available but by the time he arrived at the Court house in MINDEF, the Court was already in session.

30 AFFIRMED at Kuala Lumpur) Sgd.
this 6th day of May 1976) Capt.(U) Mohar Singh
at High Court, K. Lumpur) Rendhara

Before me,

Sgd. (Wong Tong Sang)
Commissioner for Oaths
High Court, Kuala Lumpur.

40 This affidavit is filed by the Legal Secretariat, Ministry of Defence, Jalan Padang Tembak, Kuala Lumpur for the respondents above-named.

In the High
Court

No. 6

No. 6
Order of
Court - 11th
May 1976

Order of Court - 11th May 1976

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING SUMMONS NO 88 OF 1976

In the Matter of an Application by Captain
Kamarul Azman bin Jamaludin for leave to
apply for an Order of Prohibition.

And

In the Matter of Clauses 1 of the First
Schedule of the Courts of Judicature Act
1964.

10

And

In the Matter of the General Court Martial
convened to try Captain Kamarul Azman bin
Jamaludin

Between

Captain Kamarul Azman bin Jamaludin Applicant

And

1. Lieutenant Colonel Wan Abdul Majid
bin Abdullah (President, General
Court Martial) 20
2. Major Raja Mohar bin Reja Sulaiman
3. Major Goh Seng Toh
4. Captain Francis Hilary Dias
5. Captain Sim Kian Ping (Members,
General Court Martial) Respondents

BEFORE THE HONOURABLE MR. JUSTICE HARUN

IN OPEN COURT

THIS 11TH DAY OF MAY, 1976

O R D E R

30

UPON HEARING Mr. R.K. Nathan of Counsel for
the Applicant and Mr. Stanley Isaacs of Counsel
for the Respondents and UPON READING the Notice of
Motion dated the 16th day of March, 1976 the
Statement dated the 15th day of March, 1976 and the
several affidavits filed herein IT IS ORDERED
that an Order of Prohibition prohibiting the
General Court Martial or its President and Members
from proceeding with the hearing of the Charge

against the Applicant under Section 38 and 22(1) of the Malay Regiment Enactment (F.M.S. Cap 42) be and is hereby issued and IT IS FINALLY ORDERED that the Respondents do pay the costs to be taxed by a proper officer of the Court.

In the High Court
No. 6
Order of Court - 11th May 1976
(cont'd)

Given under my hand and the Seal of the Court this 11th day of May, 1976.

Sgd.

10

Senior Assistant Registrar,
High Court,
Kuala Lumpur.

This Order is taken out by M/s. R.K. Nathan & Co., Solicitors for the Applicant abovenamed and whose address for service is at 78-B Jalan Pudu, Kuala Lumpur.

No. 7

Grounds of Judgment - 23rd December 1976

No. 7
Grounds of Judgment
23rd December 1976

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

20

ORIGINATING SUMMONS NO. 88 OF 1976

Between

Captain Kamarul Azman bin Jamaluddin Applicant

And

Lieutenant Colonel Wan Abdul Majid bin Abdullah & 4 others Respondents

GROUNDS OF JUDGMENT

30

This is an application for an order of prohibition to be issued against the General Court Martial from proceeding with the hearing of certain charges against the Applicant.

The facts briefly are as follows:

The Applicant is an officer in the 3rd Royal Recce Regiment. By a posting order dated 8 December 1973, he was transferred from his Regiment with effect from 31 October 1973 to the X List to undergo a helicopter flying training course from 1 November 1973 to August 1974 at the RMAF Base Kuala Lumpur. The course was not completed by

In the High Court

No. 7
Grounds of Judgment
23rd December 1976
(cont'd)

August 1974 and was extended to December 1974. The Applicant was alleged to have committed certain offences in August 1974 with regard to travelling claims. On 10 September 1974 Applicant's travelling claim form was returned to the Base and the matter reported to the Base Commander.

The Applicant was produced before the Base Commander in mid-September and three tentative charges were read (this is disputed) to him. The Base Commander then remanded the Applicant and ordered a Captain to take a summary of evidence in respect of the charges. This was done on 7 and 8 October 1974.

10

On 14 October 1974 the Applicant was suspended from flying training.

On 11 February 1976 the Applicant was served with a Charge Sheet and the Summary of Evidence.

The Applicant was arraigned before the General Court Martial on 16 February 1976.

20

At the trial, the Applicant was defended by Counsel who challenged the jurisdiction of the Court, but the Court ruled it had jurisdiction and the trial proceeded. On the fourth day of the trial after four witnesses had been examined, Applicant's Counsel discharged himself. Further hearing was adjourned for four days to enable Applicant to brief another Counsel.

When the trial resumed on 1 March 1976, Mr. Nathan, who appeared for the Applicant, applied to the Court to re-open the plea of jurisdiction. The Court rejected the application on 2 March 1976 and ordered the trial to proceed from 3 to 5 March 1976.

30

On 3 March 1976 the Applicant obtained leave to apply for an Order of Prohibition.

This application is founded on several grounds. At the hearing of the motion, learned Counsel for the Respondents raised a preliminary issue as to whether the Respondents could raise the plea of jurisdiction a second time. He suggested that the General Court Martial was functus officio on the matter of jurisdiction after it had made a ruling that it had and the trial had proceeded on that basis and relied on Reg. v. West Sussex Quarter Sessions, Ex parte Albert & Maud Johnson Trust Ltd. & Others (1973) 3 WLR. 149 at page 157G. I do not think that that decision applies to this case since the Court of

40

10 Appeal in that case was dealing with a case
where the inferior court had concluded the trial
and made a final order. Here the trial was still
in progress and it was open to the Applicant to
challenge the jurisdiction of the Court at any
stage of the proceedings as soon as he became
aware that the Court lacked jurisdiction or to
re-open the matter on discovery of new evidence
or awareness of the law. I would go even further
and say that it is the duty of Counsel who is also
an officer of the Court to bring to the attention
of the Court during a trial whenever it comes to
his knowledge that the proceedings are defective.
I accordingly disallowed the preliminary objection.

I will now deal with the several grounds for
this application.

1. Commanding officer:

20 Rules 7 - 13 of the Rules of Procedure (Army)
1956 provide that the investigation of charges
shall be by the Commanding Officer. Section 124(7)
of the Malay Regiment Enactment (Cap 42) defines
'Commanding Officer' as "the officer for the time
being in command of the Regiment and in the case of
a detached portion thereof the officer in command
of such detached portion. It is said that as the
applicant had been transferred to the X List his
Commanding Officer should be the Commanding Officer
of the X List. I find it as a fact that the X List
is not a Command List and does not have a
30 Commanding Officer. I also find it as a fact that
at the material time the applicant was attached to
the RMAF Base Kuala Lumpur and his Commanding
Officer was therefore the Base Commander. It
follows that the investigation of the charges into
this case was conducted by the proper Commanding
Officer. I hold that there is merit in this ground.

2. Administering of Oath:

Section 93 of the Army Act, 1955 (U.K.) as
extended by the Malay Regiment Enactment provides:

40 "93 (1) An oath shall be administered to
every member of a court-martial and
to any person in attendance on a
court-martial as judge advocate,
officer under instruction, shorthand
writer or interpreter.

(2) Every witness before a court-martial
shall be examined on oath:

In the High
Court

No. 7
Grounds of
Judgment
23rd December
1976
(cont'd)

Provided that where any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if in the opinion of the court he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, so however that where the evidence is given on behalf of the prosecution the accused shall not be liable to be convicted unless it is corroborated by some other material evidence in support thereof implicating the accused. 10

- (3) An oath required to be administered under this section shall be in the prescribed form and shall be administered at the prescribed time by the prescribed person and in the prescribed manner." 20

The following Rules of Procedure (Army) 1956 provide for the time and manner of administering oaths and specify the persons who shall administer them.

- "Rule 28 (1) Immediately after Rule 27 has been complied with, an oath shall be administered to the president and each member of the court in accordance with Rule 34 and in the presence of the accused. 30

- (2) If there is a judge advocate, the oath shall be administered by him to the president first and afterwards to each member of the court. If there is no judge advocate, the oath shall be first administered by the president to the members of the court and then to the president by any member of the court already sworn. 40

29. After the court have been sworn, an oath shall be administered to the judge advocate (if any) in accordance with Rule 34 and in the presence of the accused.

30. After the court and judge advocate (if any) have been sworn, an oath shall 50

be administered to any officer under instruction in accordance with Rule 34 and in the presence of the accused.

In the High Court

- 34.(1) An oath which is required to be administered under these Rules shall be administered in the appropriate form and in the manner set out in the Sixth Schedule to these Rules:

No. 7
Grounds of Judgment
23rd December
1976
(cont'd)

10

Provided that:-

(a) if any person desires to swear with uplifted hand in the form and manner in which an oath is usually administered in Scotland he shall be permitted to do so;

20

(b) the opening words of the oath may be varied to such words and the oath may be administered in such manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.

- (2) Subject to Rule 28(2) every oath shall be administered at a court-martial by the president, a member of the court or the judge advocate.

30

51. Save as is otherwise provided by the Act an oath shall be administered to each witness in accordance with Rule 34 before he gives evidence and in the presence of the accused."

"Sixth Schedule

Oaths and Affirmations

- (2) Oaths at Court-martials :

President and Members

40

I swear by Almighty God that I will well and truly try the /accused/ /accused persons/ before the court according to the evidence, and that I will duly administer justice according to the Army Act, 1955, without partiality, favour or affection, and I do further swear that I will not on any

In the High
Court

No. 7
Grounds of
Judgment
23rd December
1976
(cont'd)

account at any time whatsoever disclose or discover the vote or opinion of the president or any member of this court-martial, unless thereunto required in due course of law.

Judge Advocate

I swear by Almighty God that I will to the best of my ability carry out the duties of judge advocate in accordance with the Army Act, 1955, and the rules made thereunder and without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion on any matter of the president or any member of this court-martial, unless thereunto required in due course of law. 10 20

(4) Manner of Administering Oaths

Christians taking the oath shall, unless female, remove their head-dress and, holding the Bible or New Testament in their right hand, say to or repeat after the person administering the oath the words of the oath. Jews shall take the oath in the same manner except that they shall wear their head-dress and hold the Old Testament in their right hand. 30

(5) Solemn Affirmations

The person making a solemn affirmation shall say to or repeat after the person administering the solemn affirmation the words of the appropriate form of oath except that for the words "I swear by Almighty God" he shall substitute the words "I (name in full) do solemnly, sincerely and truly declare and affirm" and for the word "swear" wherever it occurs the words 40 50

"solemnly, sincerely and truly declare and affirm". "

In the High Court

10 In this case the President and Members of the General Court-Martial and the witnesses were all sworn in by a Tuan Guru (an Islamic Religious Teacher). It will also be noted, not all members of the Court, the Judge Advocate and witnesses are Muslims. Counsel for the Respondents conceded that there was a breach of the rules of procedure but contended that this did not affect jurisdiction of the Court on two grounds:

No. 7
Grounds of Judgment
23rd December 1976
(cont'd)

1. Custom of the Service:

Section 110 of the Malay Regiment Enactment provides:

20 "Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service, or according to Rules made under section 52 of this Enactment."

30 It is said that it is an accepted practice in the Armed Forces that an oath taken by a Muslim shall be administered by a Tuan Guru and that this practice has been extended to non-Muslims as well and is now a custom of the service. If that be the case, then the reason for using the services of a Tuan Guru is a religious one so as to bind Muslims to their oath. This object, however, is nullified in this case because the majority of the Court and the Judge-Advocate are non-Muslims.

40 In my opinion the Rules of Procedure permit the variation of the oath or affirmation according to the religious belief of the individual, e.g. an oath is taken by a Muslim holding the Koran in his bare right hand. The Koran should be handed to him covered in a cloth and he shall be instructed to unwrap it: Rule 34(i)(b) Note 6(a), but does not permit any variation as to the person who shall administer the oath: see Rule 28(2) "... the oath shall be administered by him"

I am also of the opinion that section 110 of the Malay Regiment Enactment does not authorise the delegation of the duty of the President and the Judge-Advocate to the Tuan Guru or materially alter the written Rules of Procedure by some unwritten custom of the service which cannot be justifiably applicable to all persons. The object

In the High Court

No. 7
Grounds of
Judgment
23rd December
1976.
(cont'd)

of an oath is to bind the person making it and not the person administering it, but whether the oath has been properly taken so as to make it binding depends entirely on the person administering it, hence the requirement that oaths shall be administered by a Judge, Magistrate or Commissioner for Oaths and in the instant case by the President or Judge-Advocate.

2. Illegality or Irregularity

It is further contended by the Respondents that what happened was done in good faith and if there was a breach of the rules it was a mere irregularity which can be cured on the grounds that there is no miscarriage of justice or denial of the rules of natural justice. I do not think so. It is the Applicant's contention that the non-Muslim Members of the Court may not be bound by the oaths as these have not been legally administered. The non-Muslim witnesses may not be inclined to tell the truth as their credit cannot be impeached legally. I agree. I hold that as the oaths have not been administered by the proper persons in this case, the General Court-Martial was not properly constituted and hence had no jurisdiction to try the Applicant and accordingly issued the order of prohibition.

10

20

In the event it is unnecessary for me to decide on the other grounds.

Sgd.

(Harun J.)
Judge, High Court,
Kuala Lumpur.

30

Kuala Lumpur,
23 December, 1976.

Certified true copy

Sgd.

Secretary to Judge
Kuala Lumpur.

No. 8

Order of the Federal Court - 5th August
1977

In the Federal
Court

No. 8
Order of the
Federal Court.
5th August
1977

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR
(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 66 OF 1976

Between

- 10 1. Lieutenant Colonel Wan Abdul Majid
bin Abdullah (President, General
Court-Martial)
2. Major Raja Mohar bin Raja Suleiman
3. Major Goh Seng Toh
4. Captain Francis Hilary Dias
5. Captain Sim Kian Ping (Members,
General Court-Martial) Appellants

And

Captain Kamarul Azman bin Jamaluddin Respondent

20 CORAM: SUFFIAN, LORD PRESIDENT, FEDERAL COURT
S.S. GILL, CHIEF JUSTICE, HIGH COURT, MALAYA
RAJA AZLAN SHAH, JUDGE, FEDERAL COURT

IN OPEN COURT

THIS 5TH DAY OF AUGUST, 1977

O R D E R

30 THIS APPEAL coming on for hearing this day
in the presence of Mr. Tam Kam Weng, Senior Federal
Counsel appearing for and on behalf of the
Appellants and Datuk P. Suppiah of Counsel for the
Respondent who appeared as amicus curiae at the
invitation of the Court AND UPON READING the Record
of Appeal filed herein AND UPON HEARING Counsel as
aforesaid IT IS ORDERED that this appeal be and is
hereby allowed AND IT IS ORDERED by consent that
there shall be no costs here and in the Court
below.

In the Federal
Court

No. 9
Judgment of
the Court
12th August
1977

No. 9

Judgment of the Court - 12th August
1977

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 66 OF 1976

Between

1. Lieutenant Colonel Wan Abdul Majid bin
Abdullah (President, General
Court-Martial) 10
2. Major Raja Mohar bin Raja Suleiman
3. Major Goh Seng Toh
4. Captain Francis Hilary Dias
5. Captain Sim Kian Ping (Members,
General Court-Martial) Appellants

And

Captain Kamarul Azman bin Jamaluddin Respondent

Coram: Suffian, L.P; 20
Gill, C.J. Malaya; and
Raja Azlan Shah, F.J.

GROUND OF DECISION

We allowed this appeal, for the following
reason.

The respondent, an officer of the 3rd Royal
Recce Regiment, was charged before a general court-
martial on 16th February, 1976. At the beginning
of the proceedings, the respondent through his
counsel objected to the jurisdiction of the court-
martial on a ground not relevant to this appeal, 30
and the objection was overruled. The court-martial
then continued and on the fourth day after four
witnesses had been called, his counsel discharged
himself. When the court-martial resumed on 1st
March, 1976, his new counsel again objected to
the jurisdiction of the court-martial, this time
on another ground, a ground relevant to this appeal,
namely that the oaths taken by members of the
court-martial had not been administered by the
prescribed person. Again this objection was over- 40
ruled whereupon the Respondent applied - and
successfully - to the High Court for a writ of
prohibition prohibiting the court-martial from
proceeding with the case against him. The court-
martial appealed to us and we allowed the appeal.

The issue simply was this - does non-compliance with Rules of Procedure ("R.P.") deprive the general court-martial of jurisdiction? The respondent contended it did, and the learned judge agreed. The court-martial contended that it did not and we agreed.

In the Federal Court

No. 9
Judgment of
the Court
12th August
1977
(cont'd)

The relevant statutory provisions are as follows.

10 Section 93 of the British Army Act was made applicable here by virtue of section 44(A)(i) of the Malay Regiment Enactment. As modified by this latter section, section 93 in its application to this case reads:

"(1) An oath shall be administered to every member of a court-martial and to any person in attendance on a court-martial as judge-advocate,

(2)

20 (3) An oath required to be administered under this section shall be in the prescribed form and shall be administered at the prescribed time by the prescribed person and in the prescribed manner"

R.P. 28 reads:

"(1) an oath shall be administered to the president and each member of the court...

(2) If there is a judge-advocate /ās in this case/ the oath shall be administered by him"

30 Here the members of the court-martial were duly qualified to be members, an oath was administered to every one of them, the oath administered was in the prescribed form, it was administered at the prescribed time and in the prescribed manner, but it is said that it was not administered by the prescribed person, i.e. the person prescribed by R.P. 28(2). When the court-martial assembled, the judge-advocate was present, and so was the Tuan Guru, an Islamic religious
40 teacher employed by the armed forces, and the oath was administered not by the judge-advocate but by the Tuan Guru on the direction of the President of the court, and it was argued that this rendered the court-martial improperly constituted and accordingly it had no jurisdiction to try the respondent.

In the Federal
Court

No. 9

Judgment of
the Court

12th August
1977

(cont'd)

Datuk Suppiah frankly stated that he was
unable to find any decided cases on the point,
but relied on -

- (1) this passage from paragraph 43 of
chapter 3 of volume 1 of the Manual of
Military Law (MML) which, referring to
the necessity of administering the
oath to members of a court-martial, says:

"If the oath is not administered as
required by R.P. to the President,
Members or Judge-Advocate, the Court is
not properly constituted."; 10

- (2) this passage from page 403 of Part 11 of
MML:

"A Court-Martial will act without
jurisdiction if it is not properly
constituted:";

which passages, he said, made it clear that the
learned judge was right to make the order of
prohibition. He said that as the judge-advocate
was present, he should himself have administered
the oath, and not the Tuan Guru. We did not agree. 20

Remembering that soldiers are not lawyers,
we should hesitate to insist on a strict compliance
with legal technicalities by court-martial as we
are with magistrates and presidents of sessions
courts. What is important here is that the oath
should be administered to every member of the
court-martial, in order to impress on them the
solemnity of the occasion and their grave
responsibility. That was indeed done. While it
is important that wherever possible that should be
done by the judge-advocate if he is present as
here, the failure by him to do so is not fatal if
in fact the oath was administered by some one else
in his presence, though it is hoped that wherever
possible it should be done by him personally, to
save arguments such as those advanced in this case
and obviate delay arising therefrom. 30

Finally we thank Datuk Suppiah who appeared
as amicus curiae at our invitation for his
assistance. 40

By consent we made no order as to costs
here and in the court below.

12th August, 1977

(Tun Mohamed Suffian)
LORD PRESIDENT, MALAYSIA

Notes

In the Federal
Court

(1) Counsel:

For appellant - Mr. Tam Kum Weng, Senior
Federal Counsel:

Amicus curiae -- Datuk Suppiah who at the
invitation of the court represented the
respondent, who was also present.

No. 9
Judgment of
the Court
12th August
1977
(cont'd)

(2) Arguments and judgment in Kuala Lumpur on
5th August, 1977.

10 (3) Cases cited:

(a) R.V. Secretary of State for War, ex parte
Martyn (1949) K.B. 242

(b) The King v. The Army Council, ex parte
Ravenscroft (1917) 2 K.B. 504

(c) Peter Chong & Ors. v. Col. Adam & Ors.
(Federal Court Appeal No. 139 of 1976).

(d) R. v. Electricity Commissioners (1924)
1. H.B. 171 at 205.

In the Federal
Court

No. 10

No. 10
Order granting
final leave to
appeal to H.M.
The Yang di-
Pertuan
Agong

Order granting final leave to Appeal to
His Majesty the Yang Di-Pertuan Agong
21st March 1978

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 66 OF 1976

Between

1. Lieutenant Colonel Wan Abdul Majid bin Abdullah (President, General Court-Martial) 10
2. Major Raja Mohar bin Raja Sulaiman
3. Major Goh Seng Toh
4. Captain Francis Hilary Dias
5. Captain Sim Kian Ping (Members, General Court-Martial) Appellants

And

Captain Kamarul Azman bin Jamaluddin Respondent

CORAM: LEE HUN HOE, CHIEF JUSTICE, HIGH COURT IN BORNEO; 20

WAN SULEIMAN, JUDGE, FEDERAL COURT, MALAYSIA;
CHANG MIN TAT, JUDGE, FEDERAL COURT, MALAYSIA;

IN OPEN COURT

THIS 21ST DAY OF MARCH, 1978

O R D E R

UPON MOTION preferred unto Court this day by Miss Madeleine Cheah mentioning on behalf of Messrs. Suppiah and Singh, of Counsel for the Respondent and Mr. Tam Kam Weng, Senior Federal Counsel appearing on behalf of the Appellants herein AND UPON READING the Notice of Motion dated the 23rd day of February, 1978 the Affidavit of Datuk P. Suppiah affirmed on the 9th day of February, 1978 all filed herein IT IS ORDERED that the Respondent be and is hereby granted final leave to appeal to His Majesty the Yang di-Pertuan Agong against the decision of this Honourable Court given on the 5th day of August, 1977 AND IT IS ORDERED that the costs of this Application be costs in the cause. 30 40

Given under my hand and the Seal of this
Court this 21st day of March, 1978.

Sgd.

CHIEF REGISTRAR
FEDERAL COURT,
MALAYSIA.

In the Federal
Court

No.10
Order granting
final leave to
appeal to H.M.
The Yang di-
Pertuan Agong
(contd)

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
FEDERAL COURT CIVIL APPEAL NO. 66 OF 1976

B E T W E E N :

CAPTAIN KAMARUL AZMAN BIN
JAMALUDDIN

Appellant

- and -

- (1) LIEUTENANT COLONEL WAN ABDUL
MAJID BIN ABDULLAH (PRESIDENT,
GENERAL COURT-MARTIAL)
- (2) MAJOR RAJA MOHAR BIN RAJA
SULAIMAN
- (3) MAJOR GOH SENG TOH
- (4) CAPTAIN FRANCIS HILARY DIAS
- (5) CAPTAIN SIM KIAN PING
(MEMBERS, GENERAL COURT-MARTIAL) Respondents

RECORD OF APPEAL

Bartletts de Reya,
199 Piccadilly,
London W1V 0AT.

Solicitors for the Appellant

Stephenson Harwood,
Saddlers' Hall,
Gutter Lane,
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