



THE HONOURABLE MR. JUSTICE MOHAMED
YUSOFF BIN MOHAMED, S.M.T.
JUDGE OF THE HIGH COURT IN BORNEO

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NOTES

Mr. Justice
Mohamed
Yusoff

We note with pleasure the appointment of Encik Mohamed Yusoff bin Mohamed, S.M.T., formerly State Legal Adviser, Selangor, as a Judge of the High Court in Borneo with

effect from January 1, 1974.

Born in Kuala Trengganu on June 6, 1927 the Honourable Mr. Justice Mohamed Yusoff received his early education in Kuala Trengganu and was appointed State Civil Service Officer Trengganu in September 1949. His Lordship held various offices in the district offices in the State. In October 1951 he was appointed as Second Class Magistrate and on July 1, 1956 he was transferred to Federal Judicial Department and posted as First Class Magistrate in Kota Bharu. In the following year he acted as President of the Sessions Court in Kelantan and in January 1958 he proceeded to the United Kingdom to read law on a Federal scholarship. In January 1961 he returned from the United Kingdom after having completed his Bar Finals and was posted to the Federal Registry in Kuala Lumpur. Since then he has held various offices as President Sessions Court, State Secretary Trengganu, Senior President, Sessions Court, Kuala Lumpur, Deputy Parliamentary Draftsman, Senior Federal Counsel and lastly as Legal Adviser for the State of Selangor from June 21, 1971 which post he held until his elevation to the Bench.

A large gathering of dignitaries and members of the Bar were present in the High Court at Kota Kinabalu on January 26, 1974, when His Lordship first sat on the Bench at Kota Kinabalu. Encik Yusoff bin Abdul Rashid, the State Attorney-General, Sabah, in his welcoming speech said:—

"May it please you my Lord,

On behalf of the members of the State Attorney-General's Chambers and myself, I have great pleasure in congratulating Your Lordship Justice Mohamed Yusoff bin Mohamed, on Your Lordship's appointment to this judicial office. Your Lordship's elevation to the Bench is indeed a great loss to the Judicial Legal Service; but what is a loss to one service is a gain to the High Court of Borneo.

My Lord, knowing Mr. Justice Mohamed Yusoff since our student days in London and having worked in the same service for the past eleven years, I know Your Lordship Justice Mohamed Yusoff is a person of high calibre, unimpeachable character, with varied legal experience and possessing such high dignity that Your Lordship can bring to the Bench. On the other hand, Your Lordship is not at all failing in the qualities essential to a Judge, being learned in the law, patient, sympathetic, just and understanding.

Your Lordship Justice Mohamed Yusoff, began his career as an officer in the Trengganu Civil Service in 1949 as an Assistant District Officer and District Officer until 1956 when

Your Lordship was seconded to the Judicial and Legal Service as a Magistrate. In 1958 Your Lordship was awarded a scholarship to read law in London at Lincoln's Inn. In 1960 Your Lordship qualified as a Barrister-at-Law. On Your Lordship's return from London, Your Lordship was appointed as President Sessions Court Raub. However, in 1962 Your Lordship's services were required by the Trengganu State Government and by mutual understanding and arrangement, Your Lordship served as the Honourable State Secretary Trengganu until 1965. Thereafter Your Lordship returned to our fold and served as President Sessions Court at Johor Bahru. In 1968 Your Lordship was promoted to the post of Senior President Sessions Court, Kuala Lumpur. After a short space of time Your Lordship then served in the Attorney-General's Chambers Kuala Lumpur in the capacity of Deputy Parliamentary Draftsman and thereafter heading the advisory section. In 1971, Your Lordship was appointed as the State Legal Adviser Selangor which was the last post held by Your Lordship before being elevated to the Bench.

My Lord, tracing the service history of Your Lordship Justice Mohamed Yusoff, is not without purpose. It is proof enough that Your Lordship Justice Mohamed Yusoff, has a vast and varied experience, amenable and adaptable to changing circumstances. Your Lordship has a keen interest in social activities, with deep understanding of human nature and human behaviour, which your Lordship acquired in the course of Your Lordship's varied activities.

My Lord, to be elevated to the Bench as a Judge is the dream cherished by most officers in the Judicial and Legal Service but indeed it is a task which is very onerous. One has to be a Judge of human beings not unconcerned with the behaviour and the circumstances of human kind. It therefore is a great asset that Your Lordship Justice Mohamed Yusoff has acquired great experience in dealing with human nature. It is said that the task of every lawyer including the Judge is to interpret the words of the law and in that way to discover what is left unwritten by the Legislature. Yet many lawyers and sometimes Judges too often forget this and therefore tend to place more emphasis on the words than on the law.

My Lord, Your Lordship Justice Mohamed Yusoff's experience in the administration of justice through the various offices in the administration instils confidence in us that Your Lordship will be able to discharge your onerous duties well to the expectation of everyone. I personally have full confidence, knowing Your Lordship as a good friend and a good man, Your Lordship's elevation as a Judge will more than justify such appointment and that the frequently heard criticism that a Judge lives in an ivory tower devoid of any feelings towards human kind is most unapt in Your Lordship's case. I am confident too that in the administration of justice Your Lordship will dispense justice with such determination to preserve and enhance the dignity and reputation of our courts and our Judges.

My Lord, on behalf of members of my Chambers and myself I pledge cooperation of my Chambers in the fulfilment of Your Lordship Justice Mohamed Yusoff's duties as a Judge. May I therefore congratulate you, your wife and members of your family who have every right to rejoice on this auspicious and happy occasion."

Mr. Chong Thain Vun, President of the Sabah Law Association then spoke on behalf of the Bar:

"My Lord, Distinguish Guests, Ladies and Gentlemen:

It is indeed an honour on my part, as head of the Sabah Bar, to be invited to present an address of welcome to our new Judge the Honourable Mr. Justice Mohamed Yusoff bin Mohamed in this solemn and majestic hall of justice and amidst the presence of such a gathering of distinguished guests.

It is seldom and in fact this is the first occasion that we in Sabah have the honour to witness the installation of a New Judge in this new Court House.

Your Lordship's elevation to the Bench is a distinct personal achievement. To this high Judicial office, which your Lordship now occupy, many aspire but only a few are selected. My Lord at the time of Your Lordship's elevation, your Lordship had held a long and impressive list of important appointments in the administrative, the legal and the judicial services of Malaysia.

Your Lordship joined the Civil Service way back in 1949. Prior to your Lordship's departure for England to read law at Lincoln's Inn in 1958, your Lordship had served as Acting District Officer in the districts of Dungun and Kemaman in Peninsular Malaysia. My Lord, in the 1950s the then colonial time, for any one at your Lordship's then young age — early twenties according to my arithmetic — to have served in such a responsible administrative post, is itself, a service record worthy of mention. Your Lordship, no doubt, fit the example of a case where the calibre, the capabilities and the potentialities of one are discovered and spotted right from the beginning.

My Lord, the record shows your Lordship was qualified as a Barrister-at-law of the Lincoln's Inn in 1960 in almost minimum time. Since 1961 and just before your Lordship's elevation to the Bench this year your Lordship had successively held the posts of President Sessions Court, Raub; President Sessions Court and Senior Assistant Registrar, High Court, Kuala Trengganu, State Secretary, Trengganu; Senior President Sessions Court, Johore Bharu; Senior President Sessions Court, Kuala Lumpur; Deputy Parliamentary Draftsman in the Attorney-General's Chambers; Senior Federal Counsel and your Lordship's last appointment was State Legal Adviser, Selangor.

My Lord, it was an understatement on my part when I described your Lordship's list of past appointments earlier as 'impressive'. Your Lordship's wide and penetrating experience in the various sectors of the administrative, the legal, and judicial services will be a tremendous asset to your Lordship in the discharge of your Lordship's new duties. My Lord, Selangor's loss is no doubt Sabah's gain.

My Lord, the administration of Justice is basic and fundamental to an orderly, progressive, stable, equal and harmonious society which we all cherish and to the creation and the sustenance of which every Malaysian is irrevocably committed.

My Lord 'justice' is not a mere idea, a thought or a philosophical concept although it is sometime associated in academic and jurisprudential discourses. It cannot be adequately defined or reduced to the confines of a narrow linguistic dimension. And yet practically in every aspect of human action, reaction, interaction and omission, one is constantly reminded of the necessity of being just and fair in such human actions or inactions for the sake of good society.

So one may say a sense of justice is a state of subjective consciousness more easily felt and experienced than being expressed in words. It may be a feeling of satisfaction or acceptance or resignation that one's case or cause has received the best consideration humanly possible through the due process of law which his society has prescribed.

An American jurist once said:

'Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with; but injustice makes us want to put things down.'

My Lord, before the administration of justice is possible, there must prevail a sense of full confidence and unquestioned faith in the workability, impartiality and the independence of our legal system within which the Rule of Law as enshrined in our Rukunegara operates. We cannot have better

assurance than the words of our Prime Minister Tun Abdul Razak who when declaring open the 2nd Malaysian Law conference said:

'Law and order should not be cynically dismissed as pious clichés. From the solemn dignity of our courts to the hobbled authority of the policeman on the beat, lies the whole system of our law with its checks and balances, remedies to the aggrieved, penalties for the guilty, protection for the disabled and thus, I solemnly believe, we will find equity and justice for all.

I would like to take this opportunity to reaffirm the conviction of Government that any plaintiff, however disagreeable his demeanour, must feel assured that the avenues of redress are open to him in our courts. It shall not matter even if the conduct of Government is the subject of his complaint.'

My Lord, our legal system is a system within a greater system — namely the constitutional framework of our country as a nation. Though we are not directly concerned with the operation of the greater system the administration of justice under our legal system requires the co-operation and the teamwork of all of us who are charged with the responsibility of seeing that the due process of law should always be strictly observed and complied with.

My Lord, the Sabah Bar takes pride in the very cordial and understanding relationship that it has established with members of both the legal and the judicial services in the State. We have all the time given our full co-operation to the Bench and to the State Attorney-General's Chambers and these understanding and co-operation have always been reciprocated. As counsel of our clients we are conscious of our professional obligation to exert our utmost in order to protect the interest of our clients within the ambit of the law. As officers of the court we are always mindful of our duty to the court in its search after the truth and in its endeavour to give justice to whichever quarter such justice is due.

My Lord, may I respectfully assure your Lordship that members of the Sabah Bar will give your Lordship the same co-operation as they have given to your Lordship's predecessor in the past and they will continue to maintain a high standard in the practice of their profession both before your Lordship's court and outside it.

My Lord, I wish to make mention of a matter which has received some publicity in the press very recently. The new Chief Justice of Borneo, His Lordship, Datuk Lee Hun Hoe has suggested to the members of the Sarawak and Sabah Bars to either form themselves into a single Bar Council or to consider joining the Malayan Bar Council. In a subsequent press statement the Secretary of the Malayan Bar Council urged that advocates and solicitors in Peninsular Malaysia, Sabah and Sarawak be represented by only one Bar Council. In support of this call it was argued that it was necessary for the maintenance of the standard of discipline and to ensure the uniformity of the standard of the profession in both territories. It was further argued that with a common Bar Council lawyers in Peninsular Malaysia would be free to practise in Sabah and Sarawak and vice versa.

My Lord, at the moment Peninsular Malaysia, Sarawak and Sabah each has its own Advocates Ordinance. Our Ordinance does provide, (though a simple one) for a procedure whereby a member of the legal profession in Sabah may be suspended or struck off the roll of advocates by an order of a judge in open court.

My Lord, at present the Advocates Ordinances in Sabah and Sarawak admit local law graduates from Australia and New Zealand to practise in their respective States. But the present Advocates and Solicitors Ordinance in Malaya does not admit such law graduates.

My Lord, I hope the lawyers in Sabah may be forgiven if they appear a bit conservative concerning the free flow of lawyers from one territory to another having regard to the fact that there are only about 800 in Peninsular Malaysia. On this point, I may not be far wrong, if I say our counterparts in Sarawak may express some reservation too.

My Lord, we subscribe to the view that we should work towards the ultimate unification of all the laws in Malaysia. But this task must be tackled systematically and

step by step having regard to the overall arrangements entered into between the State and the Federal Government when Malaysia was formed.

Against this back ground and in order to overcome many practical problems the Sabah Law Association had unanimously decided for the present time to form a Bar Council of our own. This decision was conveyed to the Federal Attorney-General in 1972. The Federal Attorney-General appreciated the reasons behind our decision and in his reply had indicated that he had no objection to our proposal so long it conformed with the important provisions of the new Advocates and Solicitors Act which was being prepared by the Attorney-General's Chambers. The Attorney-General and the Malayan Bar Council promised to send us a copy for our study.

In the past we have made it a point always to seek the view of the Malayan Bar Council on matters affecting the legal profession in Sabah. This is an effort on our part to try to maintain uniformity. This we will continue to do. We, of course will welcome more mutual exchanges of views on important questions affecting the legal profession in Malaysia as a whole. It is our intention also to extend our line of communication to our sister State — Sarawak — now that she has formed her own Sarawak Law Association.

My Lord, whatever the outcome on the issue of the Bar Council the Sabah Bar will always see that a very high standard of practice and conduct is maintained in the State.

My Lord, there are one or two things nearer at home which I wish to make some comments. First — I wish to repeat that we view with concern the present shortage of magistrates in Sabah. The three magistrates who are coping with the workload of six are very overworked. One is thinking of leaving the service. We feel that the present salary scale for the magistrates may need to be looked into if more magistrates are to be encouraged to stay more than the usual 'honeymoon' period with the judicial service.

My Lord, our Lord President once remarked that we lawyers were usually forty years out of date; that most of us learned our law twenty years ago and our law professors had learnt their law twenty years previously.

My Lord, the study of the law is a continuing process. With respect the present research and reference facilities in the High Court Library here are far from adequate. I respectfully suggest that more such facilities be made available so that the profession can keep abreast with all the new developments in the law and to make contributions thereto.

My Lord, in our Native Court System, our Native Court Ordinance prohibits representation by counsel in any proceedings before the Native Court. The parties are therefore deprived of the services of counsel and your Lordship when sitting in the Native Court of Appeal is also deprived of the assistance of counsel in the presentation of the appellants' case. Unless there are special reasons for allowing such a situation to remain we would urge our learned friend the State Attorney-General to look into it. Lastly my Lord I wish to make mention of the question of Legal Aid. The Legal Aid Act is now in force in some states of Peninsular Malaysia. There is no indication when this Act will be extended to Sabah. The Sabah Law Association on its part will give its full co-operation to such a statutory aid scheme which is indispensable in the administration of justice. Equality before the law, my Lord, will not be achieved, unless the poor can have the means or provided with means to have competent counsel to participate fully, on their behalf in the judicial process, on the same footing, as the rich and wealthy can.

In conclusion, may I on behalf of the Sabah Bar tender to you, my Lord, our respectful congratulations on your Lordship's elevation to the Bench and our warm welcome to your Lordship and your Lordship's family to Sabah. We hope your Lordship's stay in Sabah will be a pleasant one."

In his reply, the Honourable Mr. Justice Mohamed Yusoff said:

"Y.B. Wakil Ketua Menteri, Y.B. Yang Di-Pertua Dewan Undangan, Y.B. Menteri dan Pembantu2 Menteri, Y.B. State Attorney-General, The Hon'ble Consulates, Mr. Chong, The Advocates, Datuk-Datuk, Ladies and Gentlemen,

I am indeed grateful to you Mr. Attorney and Mr. Chong for the very kind words and warm welcome you have extended to me.

I am also grateful and feel honoured by the presence of so many dignitaries of the State on the occasion of my elevation this morning. This is indeed an occasion which will be long remembered and cherished by me and my wife. It is also a source of satisfaction to know that I happen to be the first Judge to be elevated here after a long while and certainly to the Bench of this new Court House.

Having been here for less than two weeks, I do not feel yet qualified to express my opinion on most of the matters raised by Mr. Chong. However, I would say that I am pleased to be here and I do not feel that I have crossed any barrier in being elevated to this Bench. In my view, there is no boundary existing between the Legal Officers, the Bar and the Bench. All of us are custodians of the Law and dedicated to the task of upholding the rule of law, to protect personal freedoms, rights and liberties of the individual without which, to my mind, our Constitution would be meaningless. This is a task which does not devolve on a Judge alone. It requires the utmost co-operation and cordiality from the other arms of the law which I am glad are assured to be forthcoming.

On my part I assure you that my court will be open to all those who seek justice, be they from among the rich or poor; the learned or less fortunate; with or without legal aid when the relevant Act is extended here. This, I believe, is essential not only because of the saying that "Justice must not only be done, but must be seen to be done" but it is also essential in order to maintain stability in a fast developing State like Sabah.

With so much development and economic activities taking place in this State which I hope, one day will become a premier State among the States in Malaysia, it is only appropriate that the administration of justice maintains no less similar pace than other developments. The distinguished Judges before me have set this pace. This onerous task has now befallen unto me and I promise that I will do my utmost to discharge my judicial function accordingly.

This Court is now adjourned."

We sincerely associate ourselves with the sentiments expressed in the welcoming speeches made to his Lordship and we wish His Lordship Mr. Justice Mohamed Yusoff happiness and satisfaction in his high office.

International Tax Conference 1974

The five-day International Tax Conference held in Singapore from January 28 to February 1, 1974 was attended by about four hundred delegates who have been drawn from the public and private sectors from all over the world mainly people connected with tax and tax matters like accounting experts, lawyers, financial controllers, tax institutes' members and various other consultants in the field. They came from Australia, Bermuda, Canada, Cayman Islands, Channel Islands, Denmark, Germany, Hong Kong, Indonesia, Ireland, Italy, Jamaica, Japan, Malaysia, Netherlands, New Guinea, New Hebrides, New Zealand, Singapore, Switzerland, Thailand, United Kingdom, United States of America and the Virginian Islands.

The Conference was organised by the Associated Business Programmes Ltd. of the United Kingdom whose Chairman is Professor G.S.A. Wheatcroft and this was its third bi-ennial meeting. The two previous meetings were held at the Bahamas and Jamaica respectively. The Conference was opened by the Honour-