

INTEGRITY AND INDEPENDENCE OF JUDGES, PROSECUTORS AND LAW ENFORCEMENT OFFICIALS

*Norfarisah Mohd Harris**

I. CASE STUDY

*PP vs Ramzidah binti Pehin Datu Kesuma Diraja Kol (R) Hj Abd Rahman (1st Defendant)
and Haji Nabil Daraina bin Pehin Udana Khatib Dato Paduka Seri Setia Ustaz Hj
Awang Badaruddin (2nd Defendant)*

- The Anti-Corruption Bureau (ACB) of Brunei Darussalam received information that the Honourable Senior Registrar, High Court Ramzidah binti PDKD Hj Abdul Rahman, who is also the Official Receiver, committed an act contrary to Section 12 (maintains a standard of living or in control of assets which are not commensurate with official emoluments), Section 12 A (misconduct of public office) and Chapter 6(c) of the Prevention of Corruption Act (Chapter 131) and was also suspected of committing other offences under the Penal Code (Chapter 22) and other related laws.
- Ramzidah, a former magistrate, was one of the few Court-appointed Official Receivers for bankruptcy, and in such capacity she oversaw payments into the Court's trust accounts for creditors (also referred to as "Official Receiver accounts"). During the course of her employment in this role, she removed funds from 255 Judgment Debtors' accounts for personal use in the amount of BND15,750,292.24.
- Haji Nabil, Ramzidah's husband and a former prosecutor before becoming a judge, was not involved in the predicate offending; however, he was involved in laundering of the proceeds of Ramzidah's offending. They were both charged with possession of unexplained wealth under the Prevention of Corruption Act (Chapter 131), but those charges were stayed until the completion of the trial. The stay has since been lifted and the prosecutors are currently still deliberating on whether to proceed with these charges.

A. Initial Detection

- The ACB received information on 28 December 2017 which indicated that Ramzidah and Nabil were living lavishly in a manner that exceeded their expected income. The Complaints Evaluation Committee (CEC) assessed this information on 30 December 2017 and investigation commenced on the same day.
- Information from the intelligence-gathering phase that included an analysis of the financial statements was sufficient for ACB to determine that there was reason to commence a full-blown investigation, starting with the issuance of freeze orders on the two suspects' bank accounts in January 2018, which amounted to BND681,496.45 and GBP5,050.13.

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- A separate money-laundering investigation into this case was opened on 5 March 2018.
- The ACB utilized a multi-disciplinary investigation team to investigate this complex case. The team consisted of investigation officers from different fields or specialization such as intelligence, financial investigation, forensic investigation and a designated investigator who would carry out investigation under the Prevention of Corruption Act (Chapter 131) or other prescribed offences. This team worked together to identify proceeds of crime to plan for seizure, asset management and confiscation.

B. Funds Tracing: International

- From the initial analysis of their financial details, it was determined that not all funds that were embezzled made their way into the two magistrates' accounts. Any cash withdrawn from the Official Receiver accounts was mostly deposited to Ramzidah's and Nabil's account. The remainder that was not deposited was later found to have been used to purchase luxury items within the country or overseas. Moreover, those funds that were deposited to the Ramzidah's and Nabil's personal accounts eventually also made their way overseas through bank telegraphic transfers.
- Open-source information indicated that Ramzidah, Nabil and their children had a significant presence in the United Kingdom. Their social media platforms, including Instagram, indicated that they were living at a residence in the UK, and drove their own vehicles. The authorities obtained further information to assess any flow of funds to the UK as well.
 - a. Wire transfers were identified amounting to GBP875,581.02 and BND1.3 million from their accounts in Brunei to their accounts in the UK that could support their purported lavish expenses in the UK, and this information was shared with the ACB.
 - b. Obtained confirmation from the UK that all the purported residences and vehicles were rentals and not owned outright by either Ramzidah or Nabil.
 - c. Further to this, the ACB also sought informal assistance from the Bribery and Corruption Intelligence Unit (BCIU) of the National Crime Agency (NCA) of the UK. The NCA conducted intelligence gathering on bank accounts and assets owned by Ramzidah and Nabil in the UK and the findings were then used to substantiate the request subsequently made through formal Mutual Legal Assistance channels.

C. Operation

The ACB conducted operations in three phases:

- a. Phase I (*to locate and identify their properties*)
 - Conducted search at the Judiciary office

Search was conducted to collect evidence relating to the judgment debtors such as bank passbook, files on the dividend pay-out, cash and other supporting evidence to support the criminal breach of trust offences.

- Conducted search at their residence

Search at their residence was conducted to collect evidence relating to the judgment debtors and also to collect evidence on the lavish lifestyle and any other supporting evidence on the proceeds of crimes. The assets found during the search were secured and sealed. This will ensure that the assets are not removed or destroyed.

- Conducted search at their registered address

Further search was conducted at their registered address. Preliminary investigation revealed that Ramzidah and her children had a registered address at her parents' house. In order for thorough investigation the parents' house was searched for any evidence pertaining to proceeds of crimes or assets. Assets found were seized and some were sealed to prevent removal or being destroyed.

- Secured all assets

All assets found during the preliminary investigation and search were seized or sealed to ensure that the assets are not disposed. For example, regarding the cars. ACB notified the relevant authority to prevent any sales or transfer of ownership.

- Froze all local banks accounts

All bank accounts established during the preliminary investigation and search were frozen. Relevant banks issued Notice Orders signed by the Public Prosecutor.

b. Phase II (*to seize their properties*)

- Re-searched their residence and registered address

Searches were conducted at their residence for the purpose of seizing all the cars, luxury items such as handbags and watches as the investigation revealed that items were acquired using proceeds of crime. Thorough search was conducted to ensure no secret area to hide the cash withdrawn from the official receiver bank accounts.

- Seized all assets e.g., cars, luxury items

All assets were seized from both their residence. The assets were then kept at a secure location for safekeeping. Assets are maintained for confiscation.

c. Phase III (*to locate and seize the remaining properties*)

- Seized cars from parents' house, car agents and parking lot

All assets were seized from their parents' house, car agents and also hotel parking lot. The assets were then kept at a secure location for safekeeping. Assets are maintained for confiscation.

Investigation continues, calling for witness and gathering evidence to be tendered in court. ACB has called witnesses for statement to support the evidence of Criminal Breach of Trust, Prevention of Corruption Act and Money Laundering offences. During the investigation ACB has called the following:

- Judiciary officers and personnel- to support the roles and responsibility of Ramzidah and the procedures in handling official receiver bank accounts.
- 256 judgment debtors – to support that there was no instruction to Ramzidah for withdrawing money from their official receiver accounts.
- Creditors – to support that they have not received payments to settle the debts.
- Bank personnel – to support the withdrawal made from Official Receiver accounts by Ramzidah and the cash denomination she received.
- Bank personnel – to support the cash deposits and telegraphic transfers to United Kingdom.
- Expert Witness – ACB has documentation to support evidence that Ramzidah withdrew the cash withdrawal from the banks.
- CCTV – to support the CCTV footage at the banks – during withdrawal and Cash deposits using the cash deposit machine.
- Car sales agents – to support the cash payments for the cars purchased.

D. Prosecution and Trial

- In order to avoid any conflict of interest or lack of impartiality as both defendants are judiciary officers and also previously a Deputy Public Prosecutor from the Attorney General Chambers, the Government of Brunei engaged Queen's Counsel (QC) from the United Kingdom to lead the prosecution team.
- Meanwhile the Judiciary Department assigned the case to the visiting High Court Judge from the United Kingdom to Brunei to hear the case.
- In July 2018, both defendants faced 157 charges which were reduced to 40 charges for offences of criminal breach of trust (CBT) by a public servant under Section 409 of the Penal Code, Cap 22; money laundering (ML) under Section 3, CARO; and possession of unexplained property under Section 12, Prevention of Corruption Act, Cap 131.

- In January 2020, the case was concluded with a conviction of the charges for both defendants. Haji Nabil was sentenced to 5 years for the offence under money laundering while Ramzidah was sentenced 10 years concurrently for CBT and money laundering.

II. CONCLUSION

The High Court sentenced Ramzidah, who was the deputy official receiver at the Bankruptcy Office to the maximum penalty of ten (10) years for each of the charges of criminal breach of trust by a public servant and five (5) years for each of the charges of money laundering. This maximum custodial sentence is allowed under the relevant legislation. The judge highlighted during sentencing that *“it would be impossible to find a more egregious example of criminal breach of trust and it was wrong you assume that your position in judiciary and society could protect you from your crime”*.

For HJ Nabil who was a senior magistrate, the court sentenced him to five years concurrently for each of his offences of money laundering. The judge highlighted that there is no doubt that he was fully aware of his wife’s activity. If he had integrity, he could have reported it to the authorities, but he was more than happy to share in the lavish lifestyle his wife has provided. He had abused his position in the judiciary.

Though both defendants have been sentenced to jail, the prosecution still applied for a benefit recovery order to assess the value of the benefit derived from the defendant's crimes. The prosecution has also filed notice for a restraining order on all the property seized by the Anti-Corruption Bureau to prohibit the property from being taken or dealt with in any manner, as they are subject to the confiscation order.

This case proves that judges, prosecutors and law enforcement officials are not above the law, and they are independent in combating corruption and other wrongdoing.

References

- i. Prevention of Corruption Act (Chapter 131)
- ii. Criminal Asset Recovery Order (CARO), 2012
- iii. PP vs Ramzidah binti Pehin Datu Kesuma Diraja Kol (R) Hj Abdul Rahman (1st Defendant) Haji Nabil Daraina bin Pehin Udana Khatib Dato Paduka Seri Setia Ustaz Hj Awang Badaruddin (2nd Defendant) Criminal Trial No.11 of 2018)