

# **A MALAYSIAN CASE STUDY: INVESTIGATION AGAINST TAN SRI KASITAH GADAM, CHAIRMAN OF THE SLDB BOARD**

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## **I. INTRODUCTION**

Investigating Corruption offences can be considered very challenging since the crime is committed by professionals or persons in high authority. Corruption offences can only be effectively investigated with a proper investigation plan. Since corruption offences are becoming more sophisticated, we need to use every investigative technique available and also every law to investigate the offence.

The Malaysian Anti-Corruption Agency (now known as the Malaysian Anti-Corruption Commission) initiated investigation against Tan Sri Kasitah Gadam, the former Rural Development and Cooperatives Minister, as well as the former Chairperson of the Sabah Land Development Board (SLDB) based on a report received. The focus of the investigation was on two areas namely:

- i) As chairman and as a public officer, he is alleged to have committed corrupt practices by using his position as Chairman of SLDB board for his financial advantage in that he did take part in making the decision to approve the proposed sale of 16.8 million shares owned by SLDB in SAPI Plantations Sdn Bhd to Briskmark Sdn Bhd where the accused was promised 3.36 million of the shares in Sapi by Datuk Wasli Bin Mohd Said.
- ii) Tan Sri Kasitah Gadam is also alleged to have deceived the members of the board of SLDB by dishonestly concealing from them the offer made by PPB of which he had knowledge and by this concealment the accused did thereby intentionally induced the members of SLDB to approve the sale of shares of Sapi owned by SLDB to Briskmark which the board would not have approved if they had known of the PPB's offer.

## **II. CHRONOLOGY OF EVENTS WHICH TOOK PLACE BASED ON THE INVESTIGATION CONDUCTED**

a) In November 1995 PPB had invited SLDB to participate in the merger and listing exercise of SLDB's shares in Sapi Plantation, of which SLDB had a 40% interest. Based on the offer letter Tan Sri Kasitah Gadam sent a letter to the Chief Minister of Sabah to get SLDB's consent to participate in the merger and listing exercise. The Honorable Chief Minister agreed with the request. SLDB was established under the Sabah Land Development Board Enactment.

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- b) Subsequent to the approval SLDB replied to PPB's offer agreeing to participate in the merger and listing exercised proposed by PPB but with the condition that the agreement was subject to the approval of the SLDB board of directors. The Board of Directors of SLDB in their subsequent meeting took note of the offer made by PPB but no decision was made whether to accept or reject the said offer.
- c) Tan Sri Kasitah Gadam, prior to that in 1994, made an agreement to purchase 2 million shares of Intra Oil Sdn. Bhd. (IOS) from the vendor by the name of Ismail. To finance this purchase the accused had obtained a loan of RM 12 million from DCB Bank and when Tan Sri Kasitah Gadam failed to pay the loan the DCB bank in attempt to recover the loans issued 3 notices of demand.
- d) Datuk Wasli was appointed to the post of General Manager of SLDB replacing Datuk Mohd Tahir Bin Jaafar on 16 October 1996. Datuk Wasli later set up a company "Briskmark" with the intention of purchasing 40% Sapi shares owned by SLDB. A letter was sent to SLDB by Briskmark owned by Datuk Wasli to purchase Sapi Plantation shares from SLDB.
- e) On 22 October 1996 the meeting of SLDB board was held and chaired by the Tan Sri Kasitah Gadam. Briskmark's proposal to acquire the Sapi shares from SLDB was presented to the SLDB board members and the said proposal was agreed and approved by the members. During the meeting Tan Sri Kasitah Gadam had concealed a much better offer which was received from PPB which is known as "5:1 offer" from the SLDB board of directors.
- f) Since Tan Sri Kasitah Gadam needed to repay the loan to DCB bank, which he had taken to purchase his shares, he had used his position to influence the sale of 40% of SLDB's shares in Sapi Plantation to Briskmark which in return Tan Sri Kasitah Gadam was promised by Datuk Wasli (8% from the 40% shares) owned by SLDB. The repayment of the loan to DCB later was deemed to have been paid from the sale of Tan Sri Kasitah Gadam's 8% interest in Sapi plantation.
- g) On 6 March 1997 Briskmark sold their 16.8 million of Sapi shares to PPBOP; in return Briskmark was given 80.4 million shares of PPBOP. In July 1997, Vincent Chia an accountant was authorized by Datuk Wasli, to deal and arrange for the finance and sale of all shares of PPBOP allotted to Briskmark.
- h) Vincent Chia later bought an offshore company which is known as Arkwell Enterprise Ltd in which he appointed himself to have power of attorney for Arkwell. A portion of the PPBOP shares were transferred and deposited by Briskmark to Arkwell. Arkwell later settled the Tan Sri Kasitah Gadam loan with the DCB Bank for the amount of RM 11.5 million from the sale of shares allocated to Tan Sri Kasitah Gadam.

The findings from the investigation were presented to the Attorney General's Office, and the Public Prosecutor after reviewing the investigation paper decided to charge Tan Sri Kasitah Gadam on two charges.

### **III. PROSECUTION'S CASE**

Tan Sri Kasitah Gadam was charged with two charges, one under the Emergency (Essential Powers) Ordinance No. 22 of 1970 ("Ordinance 22") and another under section

417 of the Penal Code (F.M.S. Cap. 45). The first charge being a conflict of interest charge and the second for cheating:

- a) Used his position as SLDB chairman for his financial gain by taking part in the decision to approve the sale of 16.8 million Sapi Plantations shares held by the board to Briskmark Enterprise Sdn Bhd. (Briskmark)
- b) Deceived SLDB Board members by omitting to disclose to members an offer by PPB Oil Palm Sdn Bhd to allocate five shares of the company for each share of Sapi Plantations in the proposed public listing.

The elements to prove the first charge against Tan Sri Kasitah Gadam:

1. Tan Sri Kasitah Gadam was a public officer at the material time (Chairman of SLDB) and that while being such public officer (Chairman) he committed a corrupt offence.
2. Tan Sri Kasitah Gadam used his position (as chairman of SLDB) for pecuniary advantage (Conflict of interest) by taking part in making the decision in approving the proposed sale of 16.8 million shares of Sapi owned by SLDB to Briskmark.
3. The conflict of interest that he put himself in was with respect to being promised 3.36 million of Sapi shares by Datuk Wasli Bin Mohd Said by virtue of the fact that he is said to have an interest in Sapi.

The elements to prove the second charge against Tan Sri Kasitah Gadam under cheating offence:

- a) Tan Sri Kasitah Gadam during the SLDB Board of Directors meeting deceived the members of the board by dishonestly concealing PPB'S offer of 5 PPBOP shares for every 1 Sapi share, which he knew of prior to the board's meeting.
- b) By concealing the PPB's offer, the Tan Sri Kasitah Gadam intentionally induced the members of the board to approve the sale of Sapi shares owned by SLDB to Briskmark.
- c) The members of the board would not have approved the sale of 16.8 million Sapi shares to Briskmark had they been aware of PPB's offer and,
- d) The act of Tan Sri Kasitah Gadam caused damage to SLDB in that SLDB suffered a loss of RM 137,524,986.

#### **IV. THE PROSECUTION'S CASE**

A total of 31 prosecution witnesses were called to give evidence in this case to prove the essential elements of both charges.

- a) Tan Sri Kasitah Gadam did not disclose the parallel offer by PPB Oil Palms to the Sabah Land Development Board (SLDB) which resulted in the board suffering a loss of more than RM137.5 million in 1996.

- b) Tan Sri Kasitah Gadam had concealed the information from the board members which resulted in the board on Oct. 22, 1996 approving the sale of Sapi Plantation shares to Briskmark Enterprise Sdn Bhd at a much lower price.
- c) Board members would not have approved the sale of 16.8 million Sapi shares to Briskmark if Tan Sri Kasitah Gadam, who at the material time was the chairman of SLDB, had disclosed the details of PPB Oil Palm's offer.
- d) Tan Sri Kasitah Gadam had intentionally deceived the board members on the offer made by PPB Oil Palms and induced the members to approve the sale to Briskmark where he did not disclose his interest in the sale of the shares.
- e) The conduct of Tan Sri Kasitah where he himself chaired the SLDB board meeting and had actively participated in the decision making after he was promised 3.36 million PPB Oil Palms shares by Briskmark Director Datuk Wasli Mohd Said.
- f) Tan Sri Kasitah Gadam was in dire need to settle his RM10.9 million bank loan, where DCB Bank had issued three notices of demand to settle the loan and such could use the money from sale of Sapi shares to settle his bank loan.
- g) There is also no evidence that Tan Sri Kasitah Gadam had disposed of his Intra Oil Sdn Bhd shares in settling the bank loan as contended by the defense.

#### **V. DEFENCE'S CASE**

- a) Tan Sri Kasitah Gadam was not aware that the source of RM11.5 million he received into his account to settle the loan with DCB Bank (now known as RHB Bank) in 1997 was from the sale of PPB Oil Palm shares.
- b) Tan Sri Kasitah Gadam does not own any shares or have any interest in Sapi Plantation.
- c) Money which had been deposited into Tan Sri Kasitah Gadam's account was from the sales proceeds of his Intra Oil Sdn. Bhd. shares (IOS).
- d) Failure to prove that Tan Sri Kasitah Gadam had received payments for both the PPB Oil Palm and IOS shares.
- e) Role of Vincent Chia where he was acting for SLDB and Briskmark and as such put him in a conflict of interest since he had acted for both seller and buyer.

#### **VI. JUDGEMENT**

At the end of the prosecution's case, on the first charge the court found the prosecution failed to make out a prima facie case against Tan Sri Kasitah Gadam due to:

- a) There was no clear evidence to show any promise made by Datuk Wasli to Tan Sri Kasitah Gadam pertaining to Sapi shares.

- b) No strong evidence to show that Tan Sri Kasitah Gadam had a direct interest in the listing of PPBOP shares which is supported from the evidence of DCB Bank officers.

As for the second charge the prosecution also failed to make out a prima facie case due to:

- a) The failure of calling the six board members who were present in the meeting created the question whether the board members were actually cheated by Tan Sri Kasitah Gadam.
- b) No evidence to indicate Tan Sri Kasitah Gadam had misused his position to influence the SLDB board in arriving at the decision to approve the sale of Sapi shares to Briskmark.
- c) There was no inducement on the part of Tan Sri Kasitah to SLDB board members approving the sale of Sapi shares to Briskmark.

Based on the above evidence adduced during the course of prosecution's case, the judge found that the prosecution failed to prove a prima facie case against Tan Sri Kasitah Gadam and as a result Tan Sri Kasitah Gadam was acquitted and discharged of both the charges against him.

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Case Citation CLJ [2009] 1 LNS 741.