

DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANG KUASA RAYUAN)
RAYUAN SIVIL NO. S-01-24-2002

ANTARA

TIO CHEE HING

... PERAYU

DAN

1. KERAJAAN NEGERI SABAH

2. PENGARAH JABATAN TANAH & UKUR, SABAH

... RESPONDEN

[Dalam Mahkamah Rayuan Malaysia (Bidangkuasa Rayuan)
Rayuan Sivil No: S-01-24- Tahun 2002

Antara

Tio Chee Ching

... Perayu

Dan

1. Kerajaan Negeri Sabah

2. Pengarah Jabatan Tanah & Ukur, Sabah

... Responden-
Responden]

**[Di Dalam Mahkamah Tinggi Sabah dan Sarawak di Kota Kinabalu
Guaman Sivil No: K22-110 Tahun 1995**

Antara

Tio Chee Ching

... Plaintiff

Dan

1. Kerajaan Negeri Sabah
2. Pengarah Jabatan Tanah & Ukur, Sabah

... Defendan-
Defendan]

Coram: Tengku Baharudin Shah Tengku Mahmud, J.C.A.
Raus Sharif, J.C.A.
Abdull Hamid Embong, J.C.A.

JUDGMENT OF THE COURT

1. We heard this appeal on 3 February 2009 and unanimously dismissed it. We now give our reasons.

2. Mr. Tio Chee Hing, the appellant, was the registered proprietor of three parcels of land held under Lahad Datu Leases No. 10793, 10797 and 10801 (“the said land”), all in the locality of Lahad Datu, Sabah.

3. On 12 October 1967, the State Government acquired the said land under section 3 of the Land Acquisition Ordinance (Sabah Cap 69) (the Ordinance) for public purpose i.e. for Radio Malaysia Sabah Transmitting Station. The total area acquired was 30.68 acres.

4. On 8 September 1995, Mr. Tio, filed a writ of summons in the High Court Kota Kinabalu, claiming against the State Government as well as the Director of Land and Survey, praying *inter alia* the following:
 - (i) A declaration that the acquisition proceedings taken in respect of the said land (which acquisition proceedings were commenced with the first publication in the Sabah Government Gazette No. 642 in Vol. XXII No. 396, M.N.R. No. 116/46/13) are illegal and therefore null and void;

- (ii) A declaration that he is entitled against the State Government and the Director of Land and Survey to possession of the said lands; and
 - (iii) Costs.
- 5. The claim was subsequently amended to include the following:
 - (i) Damages for unlawful deprivation and interest on damages.
 - (ii) Such further or other reliefs as the Court deem proper.
- 6. On 11 January 1997, Muhamad Kamil bin Awang J decided in favour of Mr. Tio. The learned Judge awarded against the State Government and Director of Land and Survey damages to be assessed by the Senior Assistant Registrar based on the market value of the said land prevailing as at 4 December 1980, together with interest and costs to be taxed unless agreed.
- 7. Aggrieved, the State Government and the Director of Land and Survey had appealed the Court of Appeal. On 29 June 1999 the Court of Appeal dismissed the appeal with costs.
- 8. On 16 December 1999, the Senior Assistant Registrar assessed the damages payable to the plaintiff for the said land

to be RM767,000.00. Aggrieved, Mr. Tio appealed to the Judge in Chambers.

9. On 8 March 2002, the learned High Court Judge increased the assessment value from RM767,000.00 to RM854,083.00 together with interest at the rate of 6% per annum from 4 December 1980 until the date of payment. The assessment value fixed was based on the valuation made by an independent valuer, Encik Sulaiman bin Haji Ahmad.
10. The learned State Counsel from the State Attorney General's Office agreed and accepted the sum fixed by the learned High Court Judge. However, Mr. Tio against the advice of his counsel, refused to accept the sum. Hence, this appeal.
11. On the hearing date, Mr. Tio was absent. So too was his counsel. However, Mr. Tio's son appeared and sought for an adjournment. His reason was that Mr. Tio's counsel could not be present in court to argue the appeal. He also informed the court that Mr. Tio is ill.
12. Senior State Counsel, Zaleha Rose Haji Pandin, objected to the postponement. She asked the court to dismiss the appeal with costs. We agreed with the Senior State Counsel. This is more so when upon reading the record of appeal and the grounds of judgment of the learned High Court Judge, we found that there is no merit in Mr. Tio's appeal. This is mainly because there

was an agreement between the parties to accept and abide with the valuation/assessment made by Encik Sulaiman bin Haji Ahmad and a further agreement not to appeal against such valuation. What was agreed by the parties was recorded by the learned High Court Judge, which is hereby reproduced:-

“Mr. Juprin Wong Adamal is the State Counsel from the State Attorney General’s Office representing the State Government of Sabah. Mr. Teh Boon Eng is a learned counsel from Peninsular Malaysia who has obtained an Ad-hoc Admission to practice in this particular case at the High Court of Sabah and Sarawak at Kota Kinabalu.

Juprin:

As far as I am concerned, I am prepared to say that we will abide by the report and the decision of the court. We are not thinking of an appeal.

Teh:

I share with the sentiment of my learned friend. After consulting client, we agree to abide by the findings of the third independent valuer and agree not to appeal against the findings of the independent valuer.”

13. The independent valuer is Encik Sulaiman bin Haji Ahmad. From the notes of the proceeding it is clear that both parties have unequivocally agreed to the valuation done by Encik Sulaiman bin Haji Ahmad and further agreed not to appeal against such valuation. Thus, we are of the view Mr. Tio should not be allowed to retract on what he agreed earlier. We are also of the view that the effect of the agreement by both parties to accept whatever findings of the independent valuer is to make the order before the High Court in actuality, a consent order, which is a non appealable matter under S. 68 (1) (b) of the Court of Judicature Act, 1964. Accordingly, Mr. Tio's appeal is non justifiable and should not be entertained.
14. For these reasons, we dismissed the appeal with costs. Deposit to the State Government and Director of Land and Survey on account of taxed costs.

Dated this 6 day of April 2009

Raus Sharif
Judge
Court of Appeal Malaysia

<u>Counsel for the appellant:</u>	Absent
<u>Solicitors for the appellant:</u>	Tetuan Shafee & Co.
<u>Counsel for the respondent:</u>	Puan Zaleha Rose Hj. Pandin
<u>Solicitors for the respondent:</u>	State Attorney General