

**IN THE COURT OF APPEAL, MALAYSIA AT PUTRAJAYA
(APPELLATE JURISDICTION)
CRIMINAL APPEAL NO: W-05(SH)-440-12/2020**

BETWEEN

TENGGU ADNAN BIN TENGGU MANSOR - APPELLANT

AND

PUBLIC PROSECUTOR - RESPONDENT

**(In the Matter of High Court of Malaya at Kuala Lumpur
Criminal Trial No: WA-45-1-01/2019)**

Between

Tengku Adnan bin Tengku Mansor

And

Public Prosecutor

CORAM:

**SURAYA OTHMAN, JCA
ABU BAKAR JAIS, JCA
AHMAD NASFY YASIN, JCA**

BROAD JUDGMENT

(Majority Decision)

**SURAYA OTHMAN, JCA
AHMAD NASFY YASIN, JCA**

Introduction

[1] The Appellant, Tengku Adnan bin Tengku Mansor was charged before the Kuala Lumpur High Court with the following offence. The charge read as follows:

“Bahawa kamu, pada 14 Jun 2016, di CIMB Bank Berhad Cawangan Pusat Bandar Damansara, Level 1, Lot A4, Block A, Pusat Bandar Damansara, di dalam Wilayah Persekutuan Kuala Lumpur, sebagai penjawat awam iaitu Menteri wilayah Persekutuan, telah menerima untuk diri kamu sendiri suatu barang berharga dengan dengan tiada balasan, iaitu, wang berjumlah RM2,000,000.00 daripada Chai Kin Kong melalui cek Hong Leong Islamic Bank bernombor 136822 milik syarikat Aset Kayamas Sdn Bhd. yang telah didepositkan ke dalam akaun CIMB Bank milik Tadmansori Holdings Sdn. Bhd. no. akaun 8001179747 yang di dalamnya kamu mempunyai kepentingan, yang mana kamu ketahui syarikat Aset Kayamas Sdn. Bhd. ada perhubungan dengan kerja-kerja rasmi kamu sendiri, dan oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 165 Kanun Keseksaan.”

English Translation

"That you, on 14 June 2016, at CIMB Bank Berhad, Pusat Bandar Damansara Branch, Level 1, Lot A4, Block A, Pusat Bandar Damansara, in the Federal Territory of Kuala Lumpur, being a public servant, namely as the Minister for Federal Territories, accepted for yourself a valuable thing without consideration, namely, the sum of RM2,000,000.00 from one Chai Kin Kong by way of a Hong Leong Islamic Bank cheque no. 136822 belonging to Aset Kayamas Sdn. Bhd. that was deposited into CIMB Bank account no. 8001179747 belonging to Tadmansori Holdings

Sdn. Bhd. in which you had an interest when you knew that Aset Kayamas Sdn, Bhd. had a connection with your official function, and you have thereby committed an offence punishable under section 165 of the Penal Code."

[2] At the end of the trial, the Appellant was found guilty and was convicted of the offence charged. He was sentenced to 12 months imprisonment and a fine of RM2,000,000.00 and in default six (6) months imprisonment.

[3] Against the conviction and sentence, the Appellant appealed to this court. We heard the appeal and having carefully considered all the submissions, in writing and orally by both parties, we came to our decision. Our decision is not unanimous. My learned brother Ahmad Nasfy Yasin JCA and I, are in agreement that this appeal must be allowed. Our learned brother, Abu Bakar Jais JCA, dissents. Our full grounds will naturally follow. We are of the view that it is appropriate for us to set out briefly the reasons for our decision. We must add, however, that this brief grounds cannot for all intents and purposes be taken as the full grounds.

Brief case for the prosecution

[4] For the present purposes, some brief backgrounds which are undisputed are necessary.

[5] The Appellant at the time of the alleged offence was the Minister for the Federal Territories.

[6] In April 2013, the Ministry for Federal Territories launched what was touted to be an affordable housing project called "Rumah Mampu Milik Wilayah Persekutuan (RUMAWIP)". The project targeted to build

80,000 affordable houses/homes by 2018. A land belonging to the Kuala Lumpur City Hall, known as “Dewan Bandaraya Kuala Lumpur (DBKL) and the Federal Government was earmarked to be utilised for this project. Another important feature was that the project’s location would be based on DBKL’s plans or proposals submitted by private companies.

[7] It is not in dispute that the Appellant had requested Tan Sri Chai (SP19) to participate in the project. Tan Sri Chai (SP19) duly obliged and had through several companies that he owned, including Aset Kayamas, participated in the project.

[8] Through a letter dated 26 January 2015, Aset Kayamas proposed to purchase DBKL’s land as part of the project. Eventually, after a few meetings and discussions, Aset Kayamas and DBKL entered into a Sale and Purchase agreement dated 1 July 2016 for the purchase of the land.

[9] At this juncture, it is appropriate to mention that the Appellant, at the material time, was also the Secretary General of UMNO (United Malays National Organisation). It is in evidence that the Appellant had, some time during the course of this project, requested from Tan Sri Chai (SP19) a political donation of about RM5,000,000.00 to RM6,000,000.00 to be utilised for two upcoming by-elections for the districts of Kuala Kangsar in Perak and Sungai Besar in Selangor: which by-elections were scheduled to be held simultaneously on the 18 June 2016.

[10] The Appellant had requested from Tan Sri Chai (SP19) to make the contribution to a company known as Tadmansori Sdn. Bhd. (“Tadmansori”). Tan Sri Chai (SP19) stated that he did not know who

the company belongs to. Tan Sri Chai (SP19) also testified that it did not cross his mind to ask the Appellant why the payment was to be made to Tadmansori and not to UMNO. Tan Sri Chai (SP19) decided to contribute RM2,000,000.00 as that was all that he could afford to give at that time. Tan Sri Chai instructed his staff to prepare the cheque and signed it. The cheque, a Hong Leong Islamic Bank cheque, number 136822 was dated 14 June 2016 (P15) and was made payable to Tadmansori. Tan Sri Chai handed over this cheque personally to the Appellant on the 14 June 2016, that is, two days before the by-elections were scheduled to be held.

[11] The Appellant then handed the cheque to his driver on the same day with the instruction to deposit the cheque into Tadmansori's bank account with CIMB Bank. The cheque was duly presented on the 14 June 2016 and credited into Tadmansori's CIMB Bank account on 16 June 2016. This was confirmed by the assistant manager of CIMB Bank, Khairolrony bin Kamarudin (SP2) and Tadmansori's Assistant Accounts Manager, Rabiatul Adawiyah binti Sobri (SP5).

[12] Rabiatul Adawiyah (SP5) and the Chief Operating Officer of Tadmansori Dato' Mohd Hasbi bin Jaafar (SP6) testified that Tadmansori did not make any payments of RM2,000,000.00 to UMNO or had any dealing with Aset Kayamas.

[13] At trial, upon being questioned by the learned counsel for the Appellant in the course of cross examination whether he, Tan Sri Chai had received any letter of acceptance/acknowledgment or receipt on the payment of RM2,000,000.00 made by Aset Kayamas, Tan Sri Chai (SP19) responded positively and took out a receipt from his wallet purported to be an UMNO's official receipt No. 376241 dated 14 June 2016 for the sum of RM2,000,000.00 (D74), on which receipt

was written “sumbangan PRK Kuala Kangsar dan Sungai Besar (Contribution to PRK Kuala Kangsar and sungai Besar) (“UMNO receipt”)”.

[14] Tan Sri Chai (SP19) claimed that the Appellant had given him the UMNO receipt two days after he had given the cheque (P15) to the Appellant. Upon the revelation of the UMNO receipt during the trial, an officer from Malaysian Anti-Corruption Commission (MACC) went to the UMNO’s headquarters at the Putra World Trade Centre and seized three unused receipt books (IDD 77, IDD 78 and IDD79) and one receipt book from which the UMNO receipt was allegedly issued (D74, P76). Farahdzilah binti Abd Kadir (SP21), who is the Deputy Head of the Finance Department at UMNO’s headquarters testified that the Appellant had signed the receipt (D74) in his capacity as the “Pengerusi Badan Perhubungan UMNO Wilayah Persekutuan (Chairman of UMNO Federal Territories)” and that the donation was for that body and not for the UMNO’s Headquarters.

The Instant Appeal

[15] The learned High Court Judge had found the Appellant guilty and convicted him. Before us, the Appellant assailed the judgment of the learned trial Judge on several grounds. One of the central issue, in our judgment, is the question whether the sum of RM2,000.000.00 was paid to the Appellant by Tan Sri Chai as a political donation to UMNO.

Our Findings

[16] In the context of the present case, one of the essential elements of the offence which must be proved by the prosecution is

that the sum of RM2,000,000.00 was paid to the Appellant for himself and not for any other person or entity. This is undoubtedly a key element of the charge. If the key element in the charge is not proved/proven beyond reasonable doubt, then the Appellant ought to be acquitted and discharged without his defence being called.

[17] Counsel for the Appellant had submitted that the learned trial Judge had erred in law and in fact when he failed to consider the evidence of the prosecution witnesses; Tan Sri Chai (SP19), the Chief Operating Officer of Tadmansori Dato' Hasbi bin Jaafar (SP6) and the investigating officer Muhammad Saad bin Bordani (SP23), which evidence on its own and cumulatively had supported the defence's contention that the sum of RM2,000,000.00 was a political donation to UMNO for the said two by-elections.

[18] To buttress the point, learned counsel for the Appellant took us through the written grounds of judgment where the learned trial Judge said in paragraph [81] as follows:

***[81]** I will now come to the issue of whether the RM2,000,000 given was solicited by the accused for himself, or was a political donation for UMNO. Tan Sri Chai had unequivocally testified in examination-in-chief and under cross-examination, that the accused had solicited from him a political donation for UMNO. The accused told him that UMNO would require funds of between RM5,000,000 to RM6,000,000 for the by-elections. A lot of reliance was placed on the UMNO receipt to substantiate the accused's contention that the RM2,000,000 was indeed a political donation meant for UMNO, and not for the accused. The defence team also referred to the prosecution's opening statement, where it was stated that the prosecution will lead evidence to show that the accused had solicited a political donation from Tan Sri Chai for the upcoming by-*

elections, and that Tan Sri Chai had given the money for that very purpose. The defence also highlighted that the investigating officer (SP23) had under cross-examination, admitted that his investigations reveal that both the accused and Tan Sri Chai had stated the same thing when their statements were taken by the MACC. Datuk Mohd Hasbi (SP6), Tadmansori's Chief Operating Officer, had under cross-examination testified that he had called the accused to inform him that the cheque has been cleared, and that the accused had during that telephone conversation told him that the funds were meant for the by-elections.

[Our emphasis added]

[19] The relevant evidence by Tan Sri Chai (SP19) can be referred to at paragraph 47 of his witness statement (P73) where he said:

“47. Berkenaan dengan bayaran cek tersebut, saya sahkan pembayaran wang RM2 juta tersebut adalah sumbangan kepada Tengku Adnan kerana beliau meminta sumbangan tersebut daripada saya untuk dana politik. Seingat saya, Tengku Adnan ada menyatakan bahawa UMNO memerlukan dana politik lebih kurang RM5-6 juta untuk pilihan raya kecil. Beliau hanya bertanya kepada saya boleh bagi. Saya pula tidak menjanjikan berapa jumlah yang akan diberikan tetapi akan menyerahkan cek sumbangan tersebut kepada beliau apabila saya sudah mempunyai wang.”

[20] Learned counsel for the Appellant described Tan Sri Chai (SP19) as being the star witness for the prosecution. Tan Sri Chai has, however, clearly confirmed that the sum of RM2,000,000.00 was a political donation to UMNO and not meant for the Appellant. Dato' Hasbi bin Jaafar (SP6) was also told by the Appellant that the RM2,000,000.00 cheque was a political donation to be utilised for the Sungai Besar and Kuala Kangsar by-elections. In short, the purpose

for which the money was to be utilised for the two by-elections was made clear to Tan Sri Chai (SP19).

[21] In this respect, we agree with the Appellant's counsel that it is trite that the prosecution is bound by the evidence of its own witnesses [see *Lim Guan Eng v Public Prosecutor* [1998] 3 MLJ 14].

[22] It is our considered view that the evidence of the investigation officer Muhammad Saad bin Bordani (SP23) is significant in that it revealed that the RM2,000,000.00 cheque (P15) was a political donation for the expenses of the two by-elections. Muhammad Saad bin Bordani had positively testified that from his investigations the RM2,000,000.00 was a donation by Tan Sri Chai (SP19) for expenses in the two by-elections.

[23] With respect, we found that nowhere in the Grounds of Judgment did the learned High Court Judge consider the evidence of Tan Sri Chai (SP19), Dato' Hasbi bin Jaafar (SP6) and the investigation officer Muhammad Saad bin Bordani (SP23) that the RM2,000,000.00 was meant for the two by-elections.

[24] Another crucial issue which the learned trial Judge had failed to consider was the failure of the prosecution to re-examine the prosecution's star witness, Tan Sri Chai (SP19), on his evidence in cross-examination that the sum of RM2,000,000.00 was a political donation to UMNO. It is undisputed that Tan Sri Chai (SP19) was the star witness of the prosecution and the entire version of the prosecution's case was built largely upon his testimony. It is trite that the failure by the prosecution to re-examine Tan Sri Chai on this

pivotal issue amounts to an acceptance of Tan Sri Chai's testimony. In similar vein, no suggestion was made by the prosecution that Tan Sri Chai (SP19) was dishonest or untruthful. No attempts, too, were made by the prosecution to impeach Tan Sri Chai (SP19) or treat him as a hostile witness.

[25] Further, in his written grounds of judgment, the learned High Court Judge had not directed his mind on the failure of the prosecution to re-examine Tan Sri Chai (SP19) on his evidence in cross-examination that the RM2,000,000.00 was a political donation to UMNO. We find that such a failure on such a critical point/issue amounted to a non-direction which rendered the conviction unsafe.

[26] In respect of the official receipt of RM2,000,000.00 (D74); Tan Sri Chai (SP19) in re-examination reiterated that he received the receipt (D74) on 16.06.2016 or 17.06.2016. From the Records of Appeal, we found that this direct evidence was neither contradicted nor disproved and thus remains unchallenged by the prosecution. Thus, the prosecution's contention that D74 was only issued in November 2018 after the Appellant was arrested and that D74 was a forged document remains unproved. The learned trial Judge on this issue, had decided to disregard the evidence of Tan Sri Chai (SP19) on the receipt. The learned trial Judge, at paragraph 85 of his Ground of Judgment had stated: -

(88) *...Tan Sri Chai, in my opinion, had demonstrated his biasness in favour of the accused in respect of the UMNO receipt. I will therefore disregard his testimony only in respect of the UMNO receipt.*"

[Our Emphasis Added]

We are not persuaded by the learned trial Judge reasoning. In our judgment, based on these set of facts, the learned trial Judge should have adopted an inference in favour of the defence.

[27] With respect, we are of the view that the failure on the part of the learned trial Judge to consider the foregoing unchallenged direct evidence, especially the evidence of Tan Sri Chai amounts to a serious misdirection which warrants appellate intervention [see ***Ong Teik Thai v Public Prosecutor* [2017] 4 MLJ 421**].

[28] As regard to the receipt book (P76), Nik Muhamad Faiez bin Idris (SP20) and the investigation officer Muhammad Saad bin Bordani (SP23) had given evidence that there were two missing receipts from the receipt book (P76) i.e. receipt no. 376241 (D74) and receipt no. 376244. This is contrary to the finding of the learned trial Judge when he held that the duplicate copy of the UMNO receipt (D74) was the only duplicate copy missing from the receipt book and that he said this had raised a red flag.

[29] Before us, the prosecution had submitted that the RM2,000,000.00 cheque was paid to the Appellant for himself as the cheque was credited into the account of Tadmansori and that there was no corresponding payment to UMNO from Tadmansori. It was also urged upon us that the whole of the defence of the Appellant was mere invention. We find such submissions, untenable. In our judgment, the crediting of the RM2,000,000.00 cheque into the account of Tadmansori did not lead to an irresistible conclusion that the Appellant had committed the offence charged; and this per se, is insufficient to convict the Appellant, as it is circumstantial evidence which does not point irresistibly to the guilt of the Appellant. Upon full scrutiny of the prosecution's evidence, we are of the view, that the

defence contention on the purpose for which the money was to be utilised was not a mere invention by the Appellant.

Conclusion

[30] In short, we are of the view that there is clearly a non-direction and misdirection by the learned trial Judge on the law and evidence. The Appellant should have been discharged and acquitted by the learned trial Judge. Accordingly in circumstances, we must intervene, and thus allow this appeal and set aside the conviction and sentence imposed on the Appellant by the High Court. The Appellant is therefore acquitted and discharged of the charge.

Appeal Allowed

(Dissenting Decision)
ABU BAKAR JAIS, JCA

I have no reason to disturb the finding of fact made by the trial Judge and I affirmed his decision to convict and sentenced the Appellant.

On sentence, I would say that there is no reason to disturb the sentence that was imposed by the trial Judge. The trial Judge had correctly taken into account among others, the service to the nation by the accused. The trial Judge had also rightly considered the gravity of the offence committed.

Hence, I would dismiss the appeal and affirm the conviction and sentence against the accused.

Dated: 16 July 2021