

Robert Tan Giok Poh

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 21 of 2016)**

Dato Seri Paduka Hj Kifrawi, C.J.
24th September, 2016.

Corruption – Sentence – Whether the sentence is manifestly excessive or wrong in principle.

Rozaiman Abdul Rahman (M/S Hj Mohamad Rozaiman Bin Dato Hj Abdul Rahman) for Appellant.
DPP Christopher Ng for Public Prosecutor.

Cases cited in the Judgment:

Public Prosecutor v Teo Chu Ha @ Henry Teo 2013 SGDC 61

Tan Hie Kiong v Public Prosecutor (Criminal Motion No.12 of 2016)

J U D G M E N T

Dato Seri Paduka Hj Kifrawi, C.J.:

The Appellant, Robert Tan Giok Poh, was charged on 21/5/2016 as follows:

Charge

That you, on the 23rd day of July 2014, at the vicinity of the 2nd floor, Estate Management and Project Development Unit, Ministry of Health, Government of Brunei Darussalam, being the Manager of Bustermite Pest Control, did corruptly give to one Kasmadiana Binti Awang Maidi, being an agent, to wit, an Assistant Project Officer (Grade I) of the said Estate Management and Project Development Unit, gratification of a sum of three hundred Brunei Dollars (BND\$300) and five (5) pieces of 'Disney Aladdin on Skates' tickets as a reward for doing an act in relation to her principal's affairs, to wit, processing the penultimate payment certificate for Bustermite

Pest Control amounting to \$141,610.80 in respect of the Eradication of Termites Works at Suri Seri Begawan, Kuala Belait [*“Kerja-Kerja Pembasmian Anai-Anai di Hospital Suri Seri Begawan, Kuala Belait – KK/274/2013 (ESTET)”*] and you have thereby committed an offence contrary to section 6(b) of the Prevention of Corruption Act, Chapter 131 and punishable under section 7(1) of the same.

He pleaded guilty to the charge and admitted to the following Statement of Facts:

‘Statement of Facts

1. The Defendant is a Singapore National and was employed in Brunei Darussalam during the time of the offence as a Manager of Bustermite Pest Control.
2. Bustermite Pest Control provides pest control services for both private and government sectors. Their projects include pest control services for the Royal Brunei Police Force, Suri Seri Begawan Hospital, Ministry of Health and the Government Housing Scheme.
3. In September 2013, the Ministry of Health (MOH) advertised a project named *“Kerja-Kerja Pembasmian Anai-Anai di Hospital Suri Seri Begawan, Kuala Belait”* with the project reference KK/274/2013 [ESTET] [hereby known as “the tender”]. The advertisement for the tender was advertised on the Pelita Brunei on 25th September 2013 and 2nd October 2013 as well as the MOH website on 11th September 2013. The advertisement for the tender was also placed on the noticeboard of the MOH building.
4. On 23rd September 2013, the Defendant went to the Ministry of Health Building and saw the announcement on the notice board for the tender. The Defendant paid for the documents right away and prepared the tender submission. The Defendant submitted the tender submission on 8th October 2013 through his foreman, one Jessie Devera.
5. On 21st January 2014, the Ministry of Health awarded the tender to Bustermite Pest Control for the amount of BND\$141,610.80.
6. Bustermite Pest Control was given until 3rd April 2014 to complete the project and the project was completed ahead of schedule on 22 March 2014. Bustermite then submitted an invoice dated 14th May 2014 entitled *“Kerja-Kerja Pembasmian Anai-Anai di Hospital Suri Seri Begawan, Kuala Belait No. Tawaran: KK/274/2013 (ESTET)-PENULTIMATE CLAIM”* to the Head of Belait Estate Management Section who then forwarded the invoice together with the Minute dated 17th May 2014 requesting that Bustermite Pest Control be paid for the project.

7. Sometime towards the end of May 2014, one Kasmadiana Binti Awang Maidi ("Kasmadiana"), an Assistant Project Officer (Grade I) of the Estate Management and Project Development Unit, Ministry of Health, Government of Brunei was assigned to process the payment claim for Bustermite Pest Control.
8. The Defendant discovered that the said project payment claim was being handled by Kasmadiana and they came into contact with each other sometime early in June 2014. During the said meeting, the Defendant asked for Kasmadiana's mobile phone number so that he could ask her for updates on the payment claim. The Defendant began communicating with Kasmadiana via the application, "Whatsapp" from 14 June 2014 to 5 August 2014.
9. On 14 June 2014, at around 5.28 pm, Kasmadiana received a message via Whatsapp from the Defendant reading ***"U please help to push me can n me will do sme ting for yr kind assistant can"***
10. On 23rd July 2014 at about 11 am, the Defendant and two of his staff came to MOH to see Kasmadiana. During the meeting Kasmadiana gave the Defendant a copy of the Purchase Order for Bustermite's Project Payment Claim.
11. After the meeting, as they were about to leave, the Defendant suddenly placed a white envelope in Kasmadiana's hand and left before she could ask about the envelope.
12. Kasmadiana opened the envelope when she returned to her office desk and was surprised to see B\$300 (three (3) pieces of B\$100 notes) and give (5) pieces of tickets to "Disney Aladdin on Skates" show to be held sometime in August 2014 at the Indoor Stadium, Jalan Berakas.
13. Kasmadiana tried to return the money and tickets to the Defendant by contacting him via Whatsapp on the same day, 23rd July 2014 at about 5.33 pm but the Defendant refused to take back the cash and tickets.
14. The following day on 26th July 2014, the Defendant accompanied by one Norkhalisah Binti Hj Ismail ("Norkhalisah"), Grade III Worker of the Estate Management and Project Development Unit, Ministry of Health declared to their head of section, one Haji Noor Hadi Bin Haji Noor Kaseh ("Haji Noor Hadi") that the Defendant had given Kasmadiana the money and tickets. Haji Noor Hadi instructed Kasmadiana to prepare a declaration letter.

15. On 5 August 2014, the Defendant texted Kasmadiana via Whatsapp informing her that the Disney Aladdin on Skates show was cancelled due to poor public response. The Defendant then asked Kasmadiana if he could retrieve back the tickets he had given her.
16. The Defendant then instructed his staff, one Joan Belen ("Joan") to collect the tickets from Kasmadiana.
17. On 6th August 201, Joan went to see Kasmadiana at her office at MOH to collect back the tickets. Kasmadiana asked Norkhalisah to return back the envelope containing the tickets and cash. Norkhalisah gave the envelope to Joan but Joan insisted on seeing Kasmadiana. When Kasmadiana went to see Joan, Joan refused to take the cash and only took the tickets and left MOH.
18. Sometime in August 2014, Norkhalisah drafted a declaration letter for Kasmadiana and the letter was submitted to Hj Noor Hadi on 11 September 2014. Haji Noor Hadi then instructed Norkhalisah to forward the declaration letter and the envelope containing the B\$300 to MOH's Administration and Finance Department.
19. On 15 September 2014, the Director of Administration and Finance, Abdul Walid Bin Haji Matassan ("Abdul Walid") called Kasmadiana to see him for clarification regarding the declaration letter she had submitted. After hearing Kasmadiana's explanation, Abdul Walid instructed Kasmadiana to lodge a report on this matter to the Anti-Corruption Bureau. The report was lodged to the Anti-Corruption Bureau by Kasmadiana herself who went to the ACB personally to report the matter.
20. In his statement to the Anti-Corruption Bureau on 15th October 2014, the Defendant admitted that he gave Kasmadiana cash amounting to B\$300 and 5 pieces of tickets to watch the Disney Aladdin on Skates Show.
21. The Defendant has also confirmed the Bustermite has received payment of B\$134,530.26 from the Ministry of Health for the project ref: KK/274/2013 (ESTET) as reflected in the Baiduri Bank Statement dated 30 August 2014.
22. The B\$300 was received from Kasmadiana and seized by the Anti-Corruption Bureau.
23. The Defendant has previously been convicted on 12th November 2015 for one count of Section 324 of the Penal Code, Chapter 22 in Magistrate's Court case 1861 of 2015 Coram before the Honourable Magistrate Hajah Ervy Sufitriana Binti Haji Abdul Rahman

and sentenced to 12 months of counselling and 100 hours community service in lieu of whipping.

24. The Defendant has committed an offence contrary to Section 6(b) of the Prevention of Corruption Act, Chapter 131 and punishable under Section 7 (1) of the same.'

He was convicted and sentenced to 12 months imprisonment with effect from 21/6/2016. He appealed against conviction and sentence. The Appellant's Counsel has decided to proceed only with the appeal against sentence.

The Appellant's Counsel submitted that the Magistrate did not give a starting point when considering appropriate sentence. I find this would be a good ground if the sentence passed by the Magistrate is not in line with the sentences imposed by our court for similar offences. The Appellant's Counsel also submitted that there is undue a delay of 2 years.

In considering whether there is undue delay, we have to take into account time taken by ACB to do their investigation after receiving a report. In this case, according to DPP, the ACB received the report on 15/10/2014 and later referred the case to the Attorney General's Chambers on 11/6/2015, I assume, for legal advice. The Appellant was then charged in court on 21/5/2016. The time taken to do investigation and preparation before prosecution need to be considered. I do not find any undue delay in this case.

The Appellant's Counsel referred me to a Singapore case of *Public Prosecutor v Teo Chu Ha @ Henry Teo* 2013 SGDC 61. The Defendant was charged with 12 charges of corruptly accepting gratification in the form of shares and money of more than half a million Singapore dollars under Section 6(a) of the Prevention of Corruption Act. He was sentenced to a total of 6 months imprisonment and a penalty of \$576,255 (in default 6 months imprisonment). The Defendant, the receiver, in this case, was a Senior Director of a company. The givers are also employees of another company. There is no public servant involved in the transaction.

In this instant appeal case, the Appellant gave a bribe to a reluctant receiver who is a public servant so as to speed up his company's payment claim. Our courts have many times declared that acts corruption have to be effectively deterred in the public interest, in general, by passing an immediate custodial sentence for a minimum 12 months imprisonment whether the offender is a public servant or not. I have endorsed this sentencing principles in the case of *Tan Hie Kiong v Public Prosecutor* (Criminal Motion No.12 of 2016). I do not find the sentence to be manifestly excessive or wrong in principle. I, therefore, dismiss the appeal.

DATO SERI PADUKA HJ KIFRAWI BIN DATO PADUKA HJ KIFLI
Chief Justice