

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

1. GAN KHAY BENG
2. BEE CHUAN RUBBER FACTORY SDN. BHD.
3. FELIXIA d/o Varnakulasinghe

Appellants

- and -

1. NG LIT CHENG alias NG YAM CHEE
2. E. P. E. ANANDA
3. JOSEPH JACOB DAVID also known as
JACOB JOSEPH as Administrator with
Will annexed of the Estate of John David
deceased

Respondents

SUPPLEMENTAL RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
London, SW1E 6HB

Solicitors for the
Appellants

SMILES & CO.
15 Bedford Row,
London, WC1R 4EF

Solicitors for the
First Respondent

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

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the Will annexed of the Estate of John
David deceased Respondents

SUPPLEMENTAL RECORD OF PROCEEDINGS

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IN THE FEDERAL COURT

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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- 3. FELIXIA d/o Varnakulasinghe Appellants

- and -

10

- 1. NG. LIT CHENG alias NG YAM CHEE
- 2. E. P. E. ANANDA
- 3. JOSEPH JACOB DAVID also known as JACOB JOSEPH as Administrator with the Will annexed of the Estate of John David deceased Respondents

SUPPLEMENTAL RECORD OF PROCEEDINGS

No. 1

NOTICE OF MOTION

IN THE FEDERAL COURT IN MALAYSIA

(APPELLATE JURISDICTION)

CIVIL APPEAL No: 19 OF 1976

BETWEEN

Ng Lit Cheng @ Ng Yam Chee Appellant

AND

- 1. Felixia d/o Varnakulasinghe (Applicant in Notice of Motion dated 7th February, 1975)
- 2. Joseph Jacob David also known as Jacob Joseph Respondents

20

In the Federal Court

No. 1
Notice of Motion
5th February
1977

In the Federal
Court

IN THE MATTER OF SEREMBAN HIGH COURT
ORIGINATING SUMMONS NO. 79 OF 1974

No. 1
Notice of Motion
5th February 1977

In the matter of the Estate of
John David, deceased

(continued)

and

PR.No. B3539/77
FEE.....
\$.....

In the matter of Seremban High
Court Petition No. 128 of 1970

7/2/77 Sd.

and

Mahkamah Tinggi

In the matter of Order 55 Rule
3(1)(f) of the Rules of Supreme
Court, 1957

10

P.R. No.
Fee Paid in Stamps
\$.....
Kerani.....

BETWEEN

Joseph Jacob David also
known as Jacob Joseph

Applicant

AND

- 1. Ng Lit Cheng @ Ng Yam Chee
- 2. Gan Khay Beng
- 3. Bee Chuan Rubber Factory
Sdn. Bhd.

TRUE COPY

Respondents

Sd.....
Senior Assistant

NOTICE OF MOTION

20

Registrar
Federal Court
Malaysia
Kuala Lumpur
11-11-80.

TAKE NOTICE that on Monday the 21st day of February,
1977 at 9.30 o'clock in the fore/afternoon or as soon
thereafter as he can be heard counsel for the abovenamed
NG LIT CHENG @ NG YAM CHEE will move the Court
for an order that the Appellant be at liberty to include the
following documents, produced in the court of trial copies
whereof are annexed hereto in the Record of Appeal that
they be read as part thereof:-

No.	Nature of Documents	Particulars	Place in Record	In the Federal Court
10	Affidavit of Ng Lit Cheng @ Ng Yam Chee to be added as a Respondent in Originating Summons No. 79 of 1974 and in the Notice of Motion filed by Felixia d/o Varnakulasinghe on the 7th day of February, 1975	Summons-in-Chambers dated 11.9.1975. Affidavit of Ng Lit Cheng @ Ng Yam Chee affirmed on 11.9.1975. Court Order dated 20.9.1975. Affidavit of Ng Lit Cheng @ Ng Yam Chee affirmed on 27.9.1975.	to be included between page 45 and page 46 of the Record and marked as pages 45(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), and (k)	No. 1 Notice of Motion 5th February 1977 (continued)

and the costs of this application be in the cause.

DATED this 5th day of February, 1977.

20 Sgd.

Sgd.

Solicitors for the Appellant

The Chief Registrar,
Federal Court,
KUALA LUMPUR.

TO:- 1. The Registrar,
Federal Court,
KUALA LUMPUR.

2. The Senior Assistant Registrar,
High Court,
SEREMBAN.

30 3. M/s. Chellappah Thambiah & Co.,
Bangunan Persatuan Yap Selangor,
3rd Floor, Jalan Bandar,
Kuala Lumpur, Solicitors for 1st
Respondent.

4. M/s. Skrine & Co.,
Straits Trading Building,
No. 4, Leboh Pasar Besar,
KUALA LUMPUR.

In the Federal
Court

No. 1
Notice of Motion
5th February 1977
(continued)

5. M/s. Augustin-Negerin & Co.,
Lee Yan Lian Building (2nd Floor),
Jalan Tun Perak, Kuala Lumpur.
Solicitors for the 3rd & 4th Respondents.

This Notice of Motion is supported by the Affidavit
of Mr. James Ponniah affirmed at Seremban this
5th day of February, 1977.

Filed this 7th day of February, 1977.

Sd.

10

The Chief Registrar,
Federal Court,
Kuala Lumpur.

This Notice of Motion is filed by M/s. Stanley Ponniah,
Ng & Soo, Solicitors for the Appellant, whose address
for service is at No. 30, Jalan Tunku Hassan, Seremban.

In the Federal
Court

No. 1
Notice of Motion
document annexed A
Summons-in-Chambers
11th September 1975

No. A.

IN THE HIGH COURT IN MALAYA AT SEREMBAN

ORIGINATING SUMMONS NO. 79 OF 1974

In the matter of the Estate of John David,
deceased.

20

and

In the matter of Seremban High Court
Petition No. 128 of 1970

and

In the matter of Order 55 Rule 3(1)(f) of the
Rules of Supreme Court, 1957.

Joseph Jacob David also)
known as Jacob Joseph) Applicant

SUMMONS-IN-CHAMBERS

30

LET ALL PARTIES CONCERNED attend before
the Judge-in-Chambers at the High Court, Seremban
on Saturday the 20th day of September, 1975 at 9.30
o'clock in the forenoon on the hearing of an application
on the part of NG LIT CHENG @ NG YAM CHEE of

37-38 Birch Road, Seremban for an order that the originating summons in this action may be amended by adding the name of NG LIT CHENG @ NG YAM CHEE as a Respondent.

In the Federal Court

No. 1

AND that the costs of this application and occasioned by the amendment be costs in the action.

Notice of Motion document annexed A Summons-in-Chambers

DATED the 11th day of September, 1975.

11th September 1975

.....Sd.....

(continued)

Senior Assistant Registrar,
High Court,
Seremban.

10

To: Joseph Jacob David and/or his Solicitors
Chan & Chia, No. 87 Jalan Birch, Seremban.

And to :

Felixia d/o Varna Kulasinghe and/or her
Solicitors Messrs. Chellappah Thambiah & Co.,
3rd Floor, Bangunan Persatuan Yap Selangor,
No. 102, Jalan Bandar, Kuala Lumpur.

20

This summons was taken out by M/s. Shearn Delamore & Co., of Chartered Bank Chambers, Seremban, Solicitors for the Applicant Ng Lit Cheng @ Ng Yam Chee.

This summons will be supported by the affidavit of Ng Lit Cheng affirmed on the 11th day of September, 1975.

No. C

In the Federal Court

IN THE HIGH COURT OF MALAYA AT SEREMBAN

No. 1

ORIGINATING SUMMONS NO. 79 OF 1974

In the matter of the Estate of John David,
deceased

Notice of Motion document annexed C Affidavit of Ng Lit Cheng

and

11th September 1975.

30

In the matter of Seremban High Court
Petition No. 128 of 1970

and

In the matter of Order 55 Rule 3(1)(f) of the

Joseph Jacob David also)
known as Jacob Joseph) Applicant

Notice of Motion
document annexed C

A F F I D A V I T

Affidavit of Ng Lit Cheng

11th September 1975

(continued)

I, NG LIT CHENG @ NG YAM CHEE
(NRIC. NO. 1639057) of 37-38 Birch Road, Seremban
of full age make oath and say:

1. I am the purchaser of the whole of the land held under Grant 953 for Lot No. 368 in the Mukim of Rasah in area 3 acres 3 roods 16 poles from Joseph Jacob David @ Jacob Joseph under a written agreement dated the 2nd day of September, 1974 a copy whereof has been previously introduced as an exhibit in these proceedings. 10

2. The sale of the said land in accordance with the provisions of the said agreement was approved by this Honourable Court on the 25th day of November, 1974.

3. In pursuance of and pursuant to the said agreement as approved by this Court I have expended and been put to expense as follows: 20

	<u>Particulars</u>	<u>Amount</u>	
(i)	Deposit under the Agreement	\$25,000.00	
(ii)	Discharge of charge and recovery of issue document of title in respect of the said land	3,000.00	
(iii)	Valuation fees	150.00	
(iv)	Survey fees	150.00	30
(v)	Levelling earth works on the said land	3,195.00	
(vi)	Clearing, felling and burning	950.00	
(vii)	Compensation to occupiers to obtain vacant possession of the land	300.00	

	<u>Particulars</u>	<u>Amount</u>	<u>In the Federal Court</u>
	(viii) Brokerage commission paid	2,200.00	No. 1
	(ix) Disbursements incurred to date in respect of agreement, transmission of land to administrator's name, Discharge of Charge, Application to Court for approval of sale, etc.	4,100.00	Notice of Motion document annexed C Affidavit of Ng Lit Cheng 11th September 1975 (continued)
10	(x) Quit Rent paid for 1975	34.00	
	(xi) Miscellaneous expenses including travelling, telephone charges etc. (approximate)	750.00	
	(xii) Legal fees to date	<u>3,500.00</u>	
		<u>\$43,329.00</u>	

20 4. I refer to the application by Felixia d/o Varakulasinghe to set aside the order made on the 25th day of November 1974 and say that in the event that such application is allowed my proprietary rights will be directly affected thereby. As such I hereby apply to be allowed to intervene in these proceedings and be joined in as a Respondent so that I may be given the opportunity to oppose such application.

Affirmed by the said Ng)
 Lit Cheng @ Ng Yam Chee)
 this 11th day of September)
 1975 at 2.30 p.m.)

Before me,

30 Sgd.

This affidavit is filed by Messrs Shearn Delamore & Co., of and whose address for service is Chartered Bank Chambers, Seremban.

In the Federal
Court

No. 1

Notice of Motion
document annexed F

Order

20th September 1975

No. F

IN THE HIGH COURT IN MALAYA AT SEREMBAN

ORIGINATING SUMMONS NO. 79 OF 1974

In the matter of the Estate of
John David, deceased

and

In the matter of Seremban High
Court Petition No. 128 of 1970

and

In the matter of Order 55 Rule 3(1)(f)
of the Rules of Supreme Court, 1957

10

Joseph Jacob David also)
known as Jacob Joseph) Applicant

BEFORE THE HONOURABLE JUSTICE
AJAIB SINGH, JUDGE, HIGH COURT,
MALAYA, SEREMBAN IN CHAMBERS
THIS 20TH DAY OF SEPTEMBER
1975

ORDER

UPON HEARING Mr. Leow Shin Fong of Counsel 20
for the Applicant and Mr. Chellappah Thambiah of
Counsel for the Respondent Felixia d/o Varnakulasinghe
and Mr. S.D.K. Peddie of Counsel for the other
Respondent Jacob Joseph

AND UPON READING the Summons-in-Chambers
(Encl:29) dated the 11th day of September, 1975 and the
affidavit of Ng Lit Cheng @ Ng Yam Chee (Encl:30)
affirmed on the 11th day of September, 1975 filed herein

IT IS ORDERED that the Originating Summons
in this action be amended by adding the name of Ng Lit 30
Cheng @ Ng Yam Chee as a Respondent AND IT IS
FURTHER ORDERED that the costs of the day's
proceedings to be paid by Ng Lit Cheng @ Ng Yam Chee
to the other parties fixed at \$75/- each.

GIVEN under my hand and Seal of the Court this
20th day of September, 1975.

Senior Assistant Registrar,
High Court,
Seremban.

In the Federal
Court

No. 1

This Order is taken out by Messrs. Shearn,
Delamore & Co., of Chartered Bank Chambers,
Seremban, Solicitors for the Applicant Ng Lit Cheng
@ Ng Yam Chee.

Notice of Motion
document annexed F
Order

20th September 1975

(continued)

No. H

In the Federal
Court

No. 1

10

Fee \$2.00 Paid
Praecipe No. 1725/75
Date 27.9.75
Sd. ? Clerk

Notice of Motion
Document annexed H

IN THE HIGH COURT IN MALAYA AT SEREMBAN

Affidavit of Ng Lit
Cheng

ORIGINATING SUMMONS NO. 79 OF 1974

27th September 1975

In the matter of the Estate of
John David, deceased.

and

In the matter of Seremban High Court
Petition No. 128 of 1970

20

and

In the matter of Order 55 Rule 3(1)(f)
of the Rules of Supreme Court, 1957

Joseph Jacob David also
known as Jacob Joseph Applicant

AND

Ng Lit Cheng @ Ng Yam Chee Respondent

A F F I D A V I T

I, Ng Lit Cheng @ Ng Yam Chee of 37-38, Jalan
Birch, Seremban of full age make oath and say:

30

1. I am the purchaser of the whole of the land held
under Grant 953 for Lot No. 368 in the Mukim of
Rasah in area 3 acres 3 roods 16 poles from

In the Federal
Court

No. 1

Notice of Motion
document annexed H

Affidavit of Ng Lit
Cheng

27th September 1975
(continued)

Joseph Jacob David @ Jacob Joseph under the written Agreement dated the 2nd day of September, 1974 a copy whereof has been previously introduced as an exhibit in these proceedings.

2. Negotiations for the purchase of the said land were carried out in order at the month of August 1974 between myself and the Attorney for the Vendor whereby it was agreed orally inter alia that I would bear all expenses arising out of and in connection with the transfer or purchase including all expenses incurred in ensuring that a proper sale would be effected. 10
3. A formal agreement was drawn up and executed on the 2nd day of September 1974.
4. In pursuance of our agreement and pursuant thereto I have expended much time and money all in good faith that the sale and purchase would be carried through to its natural conclusion. 20
5. I have for example, paid an initial deposit of \$25,000/- upon signing of the agreement.
6. Further pursuant to Clause 2 of the said agreement I have paid the costs and expenses of obtaining the Court order approving the sale of the land, the costs and expenses of obtaining the Discharge of the Charge and to secure possession of the issue document of title.
7. Upon the execution of the agreement I have also entered upon the land and caused surveys to be conducted and development works such as levelling, clearing, felling and trees commenced. 30
8. I am ready and willing to carry out and comply with the terms of the agreement and have complied with the terms thereof thus far. I am a bona fide purchaser for value without notice of the equity claimed by Felixia d/o Varnakulasinghe. 40
9. I beg to refer to the Notice of Motion dated the 7th day of February, 1975 and the affidavit in support thereof filed by Felixia d/o Varnakulasinghe

affirmed on the 31st day of January, 1975.

In the Federal
Court

No. 1

Notice of Motion
Document annexed H

Affidavit of Ng Lit
Cheng

27th September 1975

(continued)

10(a) I am instructed by my solicitors and verily believe that the affidavit of the said Felixia d/o Varnakulasinghe does not exercise any or any sufficient ground to justify the court to exercise its discretion in favour of her motion.

10

(b) I am instructed by my solicitors firstly, that the said affidavit does not disclose that Elizabeth Muttama was ever lawfully married in her lifetime.

(c) I am also instructed secondly, that paragraph 2 of her affidavit affirming that her father was the son of Elizabeth Muttama is insufficient as proof of the fact alleged since the statements therein is hearsay evidence.

20

(d) I am further instructed that the said affidavit does not sufficiently disclose nor prove that she is one of the persons whose rights or interests would be affected by the application made by the administrator for approval of sale within the meaning of Order 55 Rule 5(a) of the Rules of Supreme Court, 1957.

(e) Finally, I am instructed that Felixia d/o Varnakulasinghe has no direct interest in the estate of John David, deceased and even if she had an interest, which is not conceded, the same is too uncertain or remote.

30

11. Wherefore I pray that this Honourable Court do dismiss the application with costs, on the grounds hereinstated as well as the grounds stated in the affidavit of Mr. E. P. E. Ananda affirmed on the 1st day of April 1975.

Affirmed by the said Ng Lit Cheng)
@ Ng Yam Chee this 27th day of) Sgd. Ng Lit Cheng @
September 1975 at 9.00 a.m.) Ng Yam Chee

Before me,

Sd.

Foo Hee Joon,
Pesurohjaya Sumpah,
Seremban.

40

This affidavit is filed by Messrs. Shearn, Delamore & Co. of and whose address for service is Chartered Bank Chambers, Seremban, Solicitors for the Respondent.

In the Federal
Court

No. 2

No. 2

AFFIDAVIT OF JAMES PONNIAH

Affidavit of James
Ponniah

5th February 1977

IN THE FEDERAL COURT IN MALAYSIA

(APPELLATE JURISDICTION)

CIVIL APPEAL NO: 19 OF 1976

FEE \$2/- PAID
PRAECIPE No.
222/77

DATE 5/2/77

.....Sd.....
CLERK

BETWEEN

Ng Lit Cheng @ Ng Yam Chee Appellant

AND

1. Felixia d/o Varnakulasinghe (Applicant in
Notice of Motion 10
dated 7th February,
1975)
2. Joseph Jacob David also
known as Jacob Joseph Respondents

In the Matter of Seremban High Court Originating
Summons No. 79 of 1974

In the matter of the Estate of
John David, deceased

and

In the matter of Seremban High
Court Petition No. 128 of 1970

20

and

In the matter of Order 55 Rule
3(1)(f) of the Rules of Supreme
Court, 1957

BETWEEN

Joseph Jacob David also
known as Jacob Joseph Applicant

AND

1. Ng Lit Cheng @ Ng Yam Chee
2. Gan Khay Beng
3. Bee Chuan Rubber Factory Sdn. Bhd.
Respondents

30

A F F I D A V I T

In the Federal
Court

No. 2

Affidavit of James
Ponniah

5th February 1977

(continued)

I, JAMES PONNIAH, a Malaysian citizen of full age residing at No. 80-B, Circular Road, Seremban do solemnly affirm and say as follows :-

1. I am an Advocate and Solicitor practising at Messrs. Stanley Ponniah, Ng & Soo of No. 30, Jalan Tunku Hassan, Seremban, Solicitors for the Appellant in Federal Court Civil Appeal No. 19 of 1976.

- 10 2. I am charged with the conduct of the proceedings in Federal Court Civil Appeal No. 19 of 1976 which is fixed for hearing on the 21st day of February, 1977.

3. The documents, particulars of which are provided in page 2 of the Notice of Motion (hereinafter called "the said Documents") were taken by me and left separately. They indicate and show how the Appellant was allowed to be added as a party in the Notice of Motion dated the 7th day of
20 February, 1975 filed by Felixia d/o Varnakulasinghe.

4. It was always intended that the said documents were to be part of the Record of Appeal of the Appellant.

5. When the Record of Appeal was filed on the 18th day of December, 1976, the above documents, because they were kept separately were inadvertently left out of the Record of Appeal.

6. The omission of the said documents was only
30 discovered by me, when on the 3rd day of February, 1977, I took the brief with a view to get up the Appellant's case for the hearing of the Appeal on the 21st day of February, 1977.

7. I humbly crave leave that the said documents be now added into the Record of Appeal and be read as part of the Record of Appeal and be indexed as 7A and placed in the Record of Appeal between pages 45 and 46 and marked as Page 45A to K.

8. In view of the above, I humbly pray for the Order in terms of my application.

40 AFFIRMED by the abovenamed Deponent)
at Seremban this 5th day of February,) Sd.
1977 at 10.00 a.m.) James Ponniah

In the Federal
Court

No. 2

Affidavit of James
Ponniah

5th February 1977

(continued)

Before me,

Sd.

FOO HEE JOON
Persurohjaya Sumpah
Commissioner for Oaths,
Seremban

This Affidavit is filed by Messrs. Stanley Ponniah,
Ng & Soo, Solicitors for the Appellant abovenamed,
whose address for service is at No. 30, Jalan
Tunku Hassan, Seremban.

10

Filed this 7th day of February, 1977.

Sd.

Chief Registrar

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

1. GAN KHAY BENG
 2. BEE CHUAN RUBBER FACTORY SDN. BHD.
 3. FELIXIA d/o Varnakulasinghe
- Appellants

- and -

1. NG LIT CHENG alias NG YAM CHEE
 2. E. P. E. ANANDA
 3. JOSEPH JACOB DAVID also known as
JACOB JOSEPH as Administrator with
Will annexed of the Estate of John David
deceased
- Respondents

SUPPLEMENTAL RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
London, SW1E 6HB

Solicitors for the
Appellants

SMILES & CO.
15 Bedford Row,
London, WC1R 4EF

Solicitors for the
First Respondent