AMALAYSIA

IN THE HIGH COURT IN SABAH AND SARAWAK AT KOTA KINABALU

APPLICATION FOR JUDICIAL REVIEW NO BKI-25-39-11/2025

IN THE MATTER OF the Attorney General's decision dated 11th November, 2025 to file a Notice of Appeal against the judgment of the High Court delivered by Datuk Celestina Stuel Galid on Sabah's constitutional entitlement under Article 112C and the Tenth Schedule of the Federal Constitution;

AND IN THE MATTER OF Articles 4(1), 8, 112C, 112D, 145(2) of the Federal Constitution;

AND IN THE MATTER OF Order 53 Rule 3(2) of the Rules of Court 2012.

BETWEEN

NAOMI @ NEOMI FRANCIS
(NRIC NO. 661212-12-5074) **… APPLICANT**

AND

THE ATTORNEY GENERAL OF MALAYSIA **… RESPONDENT**

APPLICANT'S WRITTEN SUBMISSION

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EXECUTIVE SUMMARY

A. INTRODUCTION

1. The Applicant respectfully seeks leave under Order 53 ROC 2012 to commence judicial review proceedings challenging the Respondent's impugned decision dated 11th November 2025 to file a Notice of Appeal against the judgment of the High Court delivered by Datuk Stuel Galid on Sabah's constitutional entitlement under Article 112C and the Tenth Schedule of the Federal Constitution (the "High Court Judgment").

2. The challenge is **not** directed at the merits of the High Court Judgment or the substantive issues of Sabah's constitutional rights. Rather, it is a **pure public law complaint** that the impugned decision-making process was vitiated by one or more of the following constitutional and administrative law vices:
    - Illegality and ultra vires Article 145(2) FC;
    - Improper or collateral purpose;
    - Bad faith / mala fides;
    - Acting under dictation or external pressure / lack of genuine independent judgment;
    - Taking into account irrelevant considerations and/or failing to take into account relevant considerations;
    - Irrationality (Wednesbury unreasonableness); and/or
    - Breach of the constitutional requirement of independent exercise of discretion under Article 145(2) FC.

3. Article 145(2) FC vests the Attorney General with the power to act as the principal legal adviser to the Yang di-Pertuan Agong, and by extension, to provide independent legal advice to the Government. While this confers a wide discretion, recent Federal Court authority (*Sundra Rajoo Nadarajah v Menteri Luar Negeri, Malaysia & Ors [2021] 5 MLJ 209*) has authoritatively established that such discretion is **not absolute or unfettered**. In **appropriate, rare and exceptional cases**, it is amenable to judicial review — particularly where the

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law has been misunderstood, misapplied, or where independence has been compromised.

4. The Applicant advances a serious, evidence-based arguable case (drawn from the filed affidavits, public statements, press reports, and surrounding circumstances documented in the bundles) that the decision-making process fell into one or more of these exceptional categories. The sequence of events — an initial public assurance of "no appeal" followed by a sudden reversal after a special Cabinet meeting — raises credible inferences of political dictation, improper purpose (e.g., fiscal containment and avoidance of historical accountability), and irrationality.

5. At the leave stage, the Applicant need only demonstrate:
    - An **arguable case** on the evidence (not assumed to be true, but scrutinised);
    - That the complaint raises a **public law illegality** rather than a private merits defence; and
    - That the issue cannot be **adequately or satisfactorily resolved** within the ordinary appellate process (where the focus is on the substance of the High Court Judgment, not the legality of the decision to appeal it).

6. Granting leave will not halt justice; it will ensure that the Attorney General's power — a core constitutional function — is exercised lawfully and independently, consistent with the rule of law, separation of powers, and the basic structure of the FC. This matter raises novel issues of constitutional significance, warranting full ventilation at a substantive hearing.

I. PROCEDURAL POSTURE & THE LEGAL THRESHOLD FOR LEAVE

7. This application is made ex parte (or inter partes as the case may be) under Order 53 ROC 2012 for leave to apply for judicial review. The leave stage is a **filtering mechanism** only — not a full trial on merits or a mini-trial of disputed facts.

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8. However, because the relief sought challenges the Respondent's decision to appeal in ongoing appellate proceedings, the threshold is necessarily heightened. The Court must be satisfied that:
    - There is a **credible arguable case** disclosed on the evidence filed (affidavits, exhibits, correspondence);
    - The complaint is one of **public law illegality** in the decision-making process (not an attack on the merits of the High Court Judgment);
    - The issue is **justiciable** and not non-justiciable policy or merits-based; and
    - There is **no satisfactory alternative remedy** within the appellate process (e.g., the Court of Appeal cannot scrutinise the legality of the AG's decision to file the appeal; its jurisdiction is confined to reviewing the High Court Judgment itself).

9. The leading Commonwealth authority in the bundles — **Sharma v Brown-Antoine [2006] UKPC 57** — is directly on point and has persuasive weight in Malaysia:

> "a decision to prosecute was in principle susceptible to judicial review… [but] a highly exceptional remedy" (BOD_1-20__(1).pdf, p. 2).
> "complaints could… be adequately resolved within the criminal process itself… [including]… abuse of process" (ibid).
> "wrong to assume… that the facts… were true… to be judged on all the evidence" (ibid, p. 16).
> "grant of leave which ignores this condition must be suspect" (ibid).

10. Malaysian law aligns with this caution. The Federal Court in **Sundra Rajoo Nadarajah v Menteri Luar Negeri, Malaysia & Ors [2021] 5 MLJ 209** (Federal Court) held:

> "Article 145(3) of the FC provides the AG/PP with a wide discretion… However, the AG/PP does not have absolute or unfettered discretion… In appropriate, rare and exceptional cases, such discretion is amenable to judicial review."

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This marked a clear evolution from earlier non-justiciability cases (e.g., *Long bin Samat v PP [1974] 2 MLJ 152*).

11. The leave enquiry is therefore narrowly focused:
    - Is there evidence capable of supporting an **arguable inference** of dictation, improper purpose, bad faith, or irrationality?
    - Can the public law complaint (legality of discretion) be fairly and fully resolved by appellate mechanisms alone?
    - Does the Applicant's case cross the “highly exceptional” threshold without fragmenting the appellate process unnecessarily?

12. As detailed in the Applicant's Affidavit in Support (Encl. 3) and Corrective and Supplementary Affidavit (Encl. 6), the answer to the first question is yes; the second is no. The decision to appeal came after an initial public commitment not to appeal, following a special Cabinet meeting where political and fiscal concerns were evidently at play. This raises serious questions of independence and purpose under Article 145(2).

II. CHRONOLOGY AND FACTUAL MATRIX

13. The Applicant relies on the full chronology set out in the filed affidavits and bundles. Key events (drawn from Encl. 3 and Encl. 6):

Date	**Event**	**Relevance to Grounds**	**Bundle / Verification Reference**
17/10/2025	High Court delivers judgment affirming Sabah's 40% entitlement under Art 112C and Tenth Schedule; finds decades of non-compliance and orders time-bound	Establishes the substantive judgment being appealed; highlights constitutional significance and urgency.	Written Judgment (Datuk Celestina Stuel Galid J); Affidavit para 4(a).

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	negotiations/review for arrears ("Lost Years").		
11/11/2025 (Morning)	AGC publicly announces: "The Federal Government will not appeal Sabah's 40% revenue ruling." Pledges immediate negotiations.	Creates legitimate expectation of no appeal; basis for irrationality and bad faith grounds when reversed.	The Star report (Exhibit PAS-1); Affidavit para 4(c).
11/11/2025	Special Cabinet Meeting held to discuss the judgment; AG presents advice on "defects" in grounds (e.g., abuse of power findings implicating governments since 1974).	Evidence of political influence/dictation; improper considerations (political embarrassment, fiscal implications).	AGC Statement (Exhibit PAS-1); Affidavit para 4(c), 15.
13/11/2025	AGC files Notice of Appeal against "parts of the court's decision, specifically matters involving alleged errors in the judge’s written grounds".	Impugned decision; contradictory to "no appeal" assurance.	Notice of Appeal (to be exhibited); Affidavit para 4(e).
14/11/2025	AGC clarifies appeal is "partial" and "does not relate to the issue of Sabah’s 40 per cent special grant"; reiterates negotiations to proceed.	Highlights inconsistency and ambiguity; irrelevant considerations (damage control).	Malay Mail report (Exhibit PAS-1); Affidavit para 4(f).
14/11/2025	Datuk Roger Chin's statement: Appeal broader than claimed; "strikes at the core" and could render 40% "effectively unenforceable".	Expert analysis supporting improper purpose and prejudice.	Malay Mail report (Exhibit PAS-1); Affidavit para 4(k).

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15/11/2025	Prime Minister Anwar Ibrahim: Appeal only on "certain aspects"; no need to "insult past leaders" or use judgment as "political capital".	Reveals improper motive (face-saving for past governments); irrelevant political considerations.	The Edge report (Exhibit PAS-2); Affidavit para 4(o).
17/11/2025	Applicant files this JR application.	Promptness complied with.	Court file.

14. The Applicant will highlight precise pages during oral submissions. The matrix shows objective indicators (timing, public contradictions, expert commentary) capable of supporting arguable inferences of vitiating factors. The reversal from "no appeal" to filing an appeal after Cabinet deliberation, coupled with shifting justifications, is central to the case.

III. GOVERNING LEGAL PRINCIPLES

A. Constitutional Source & Nature of the Attorney General's Discretion

15. **Article 145(2) FC**:

> "The Attorney General shall be the principal legal adviser to the Yang di-Pertuan Agong."

By extension, the AG advises the Government on legal matters, including decisions to appeal civil judgments. This is a **constitutional discretion**, not absolute licence. It must be exercised independently, lawfully, and for proper legal purposes.

16. **Sundra Rajoo** (supra) is the controlling Malaysian authority: discretion is **wide** but **reviewable in rare cases** where independence is compromised, law misapplied, or abuse apparent. The AG's role is to act as an independent guardian of legality, not a tool for political expediency.

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B. Core Public Law Constraints (Malaysian Administrative Law)

17. **Halsbury's Laws of Malaysia** (Administrative Law sections in bundles):

    "All statutory powers must be exercised in good faith, and for the purpose for which they were granted."
    "improperly parted with its own powers by accepting dictation from another body."
    Classic vitiating factors: dictation, improper purpose, bad faith, irrelevant considerations, irrationality.

18. **Illegality / Ultra Vires**: The decision must be within the legal bounds of Article 145(2). Appealing to evade constitutional obligations or under political pressure exceeds authority.

19. **Improper Purpose**: Power must serve legitimate legal ends, not collateral motives like fiscal delay or political face-saving.

20. **Acting Under Dictation**: The AG must exercise independent judgment; yielding to Cabinet direction vitiates the decision.

21. **Bad Faith**: Decisions tainted by dishonesty or extraneous motives are invalid.

22. **Irrelevant / Relevant Considerations**: Must ignore political pressures; consider constitutional urgency and public interest in Sabah's rights.

23. **Irrationality**: No reasonable AG would reverse a "no appeal" stance without clear legal error, especially given the judgment's clarity.

C. Commonwealth Prosecutorial / Discretionary Review Principles (Bundles)

24. **Sharma v Brown-Antoine** (Trinidad & Tobago, UKPC): Reviewable in principle where independence interfered with; exceptional remedy; evidential scrutiny at leave; prefer alternative resolution where possible.

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25. **Marshall v DPP** (Jamaica, UKPC): Review possible for bad faith / unreasonableness; deference to expertise; but intervention if abuse shown.

26. **Mohit v DPP** (Mauritius): High bar; decisions not meaningfully reviewable absent extreme abuse; public interest deference.

27. **Matalulu v DPP** (Fiji): “Flagrant impropriety” threshold; public interest overrides.

28. **Teo v AG** (Samoa): “Flagrant impropriety” for decisions; reluctance due to separation of powers.

29. **R v DPP ex p Kebilene** (UK): Discretion non-reviewable absent bad faith; limits pre-trial interference.

30. **Roslan Maalik v PP** [2017] 2 CLJ 713 (Malaysia): Procedural fairness; unsafe if unreasoned / contradictory.

These authorities collectively affirm: independence is constitutionally mandated; review is exceptional but available where process tainted. While many are prosecutorial, the principles extend to the AG's appellate decisions under Art 145(2).

IV. APPLICATION TO PLEADED GROUNDS

31. **Ground 1: Illegality / Ultra Vires** The Respondent's decision exceeds the lawful scope of Article 145(2). The AG's role is independent legal advice; appealing to delay constitutional compliance is ultra vires. Evidence: Reversal post-Cabinet meeting suggests non-independent action.

32. **Ground 2: Improper / Collateral Purpose** Power must serve proper legal ends (correcting error). Here, the dominant purpose appears collateral: postponing arrears, avoiding blame for past governments. Arguable from PM's statements (Exhibit PAS-2) and expert analysis (Chin).

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33. **Ground 3: Acting under Dictation / Lack of Independence** Art. 145(2) requires genuine AG judgment. Halsbury: “accepting dictation” unlawful. Sharma: review where “interference with the prosecutor’s independent judgment”. Applicant points to Cabinet meeting and political statements suggesting external influence.

34. **Ground 4: Bad Faith / Mala Fides** Must act honestly. Serious allegation; requires credible material (Sharma warning: scrutinise evidence). Public "no appeal" followed by appeal indicates dishonesty.

35. **Ground 5: Failure to Consider Relevant Considerations / Consideration of Irrelevant Considerations** Must weigh constitutional urgency, judgment clarity, public interest; ignore politics/fiscal fears. Arguable failure from lack of legal error identification.

36. **Ground 6: Irrationality** Decision so unreasonable no rational AG would make it (Wednesbury). Flip-flop without justification meets threshold.

37. **Ground 7: Alternative Remedy / No Fragmentation** Sharma: must ask if resolvable elsewhere. Applicant submits complaint (discretion legality) cannot be resolved in appeal (merits-focused). Public law supervision needed (Sundra Rajoo).

V. REMEDIES SOUGHT & WHY LEAVE SHOULD BE GRANTED

38. Reliefs:
    - Certiorari to quash impugned decision;
    - Prohibition restraining appeal continuation;
    - Declaration decision unlawful / unconstitutional;
    - Declaration AG must exercise independence under Art 145(2);
    - Further relief.

39. Respect separation: Court supervises **process legality**, not judgment merits.

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40. Leave justified because:
    - Art 145(2) creates justiciable independence standard;
    - Malaysian law (Halsbury, Sundra Rajoo) treats dictation/improper exercise unlawful;
    - Commonwealth authorities confirm reviewability where independence compromised;
    - Arguable case on evidence; issue not resolvable in appeal.

VI. QUOTATION INDEX (KEY EXCERPTS ≤25 WORDS)

Source	Pinpoint	Excerpt	Proposition
Sharma	BOD_1-20 p.2	"decision to prosecute… susceptible to judicial review… highly exceptional remedy"	Reviewability + exceptional
Sharma	ibid	"interference with the prosecutor's independent judgment"	Independence constraint
Sharma	ibid p.16	"wrong to assume… facts… were true… judged on all the evidence"	Evidential scrutiny at leave
Sharma	ibid	"grant of leave which ignores this condition must be suspect"	Alternative remedy priority
FC	Art 145(2)	"principal legal adviser to the Yang di-Pertuan Agong"	Constitutional source
Halsbury	[80.021]	"All statutory powers… in good faith… for the purpose… granted"	Good faith / purpose
Halsbury	[80.034]	"improperly parted… by accepting dictation from another body"	Dictation unlawful
Sundra Rajoo	[2021] 5 MLJ 209	"…not absolute or unfettered… amenable to judicial review in appropriate, rare and exceptional cases"	Modern Malaysian position

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VII. CONCLUSION & PRAYER

41. The Applicant respectfully prays that leave be granted to commence judicial review, with directions for an expedited inter partes hearing, preservation orders if needed, and any further directions to avoid prejudice.

In-Depth Analysis of Cases

These documents primarily compile case law from various Commonwealth jurisdictions on the theme of **judicial review of prosecutorial discretion**, particularly decisions by Directors of Public Prosecutions (DPPs) or equivalent authorities regarding the initiation, continuation, or discontinuation of criminal prosecutions. This includes powers to enter *nolle prosequi* (discontinuing a prosecution), decisions not to prosecute, and related constitutional safeguards.

The cases span jurisdictions like Mauritius, Fiji, Jamaica, Trinidad and Tobago (via UK Privy Council appeals), Malaysia, and the UK. They emphasize the tension between prosecutorial independence (often constitutionally protected) and limited judicial oversight to prevent abuse. Common themes include:

- **Prosecutorial independence**: DPPs are generally not subject to external direction, but their decisions may be reviewable in exceptional cases (e.g., bad faith, irrationality, or illegality).
- **Scope of judicial review**: Courts are reluctant to interfere, applying high thresholds like "flagrant impropriety" or "Wednesbury unreasonableness."
- **Public interest**: Decisions often hinge on whether prosecution serves the public interest.
- **Procedural fairness**: Issues like fair trials under constitutional rights (e.g., Malaysia's Federal Constitution Art. 5(1)).

I will analyze each major case extracted from the documents in depth, based on the provided excerpts. For each, I'll cover: **Facts**, **Key Issues**, **Holdings**, **Reasoning**, and **Significance**. I've grouped duplicates (e.g., two versions of *Marshall v DPP*) and cross-referenced overlapping discussions. Minor referenced cases (e.g., *Gouriet v Union of Post Office Workers*) are noted briefly where relevant.

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1. Mohit v DPP (Mauritius Supreme Court, 2003) – From "BOD_74-83_.pdf"

- **Facts**: The applicant (M) initiated a private prosecution against a third party in the District Court. The DPP discontinued it by entering a *nolle prosequi*. M sought judicial review, arguing the DPP failed to exercise discretion judiciously.

- **Key Issues**:
  - Is the DPP's decision to discontinue a private prosecution (via *nolle prosequi*) subject to judicial review?
  - What is the scope of review under s. 72 of the Mauritius Constitution 1968, which grants the DPP independent powers to discontinue proceedings?

- **Holdings**: Application for leave refused. The DPP's decision is not subject to meaningful judicial review, as it involves unreviewable prosecutorial discretion.

- **Reasoning**:
  - The Constitution vests exclusive, independent powers in the DPP, free from external control. Judicial review focuses on process, not merits, but the DPP doesn't hear parties or give reasons, making review impractical.
  - Courts should not usurp the DPP's role in deciding prosecutions based on public interest. Reliance on English and Commonwealth precedents (e.g., *Gouriet v Union of Post Office Workers* [1978] AC 435; *Keung Siu Wah v AG* [1991] LRC (Const) 744) emphasized reluctance to review. The Fiji case *State v DPP ex p Matalulu* (1998) was distinguished as not followed.
  - Per curiam: If the DPP prosecutes, the matter proceeds automatically; review would undermine efficiency.

- **Significance**: Reinforces prosecutorial immunity in Mauritius, limiting review to extreme cases. Highlights separation of powers—courts avoid "policing" prosecutions. Cited in later cases for the "public interest" test.

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2. Sharma v Brown-Antoine and Others (UK Privy Council, 2006) – From "BOD_1-20__(1).pdf"

- **Facts**: The Chief Justice of Trinidad and Tobago faced imminent prosecution for attempting to pervert justice. He obtained ex parte leave for judicial review of the Deputy DPP's decision to prosecute, alleging political influence. The High Court refused to set aside leave; the Deputy DPP appealed.

- **Key Issues**:
  - Is a decision to prosecute susceptible to judicial review?
  - What threshold must an applicant meet for leave (arguable case)?
  - Should review proceed if issues (e.g., political pressure) can be resolved in criminal trials?

- **Holdings**: Appeal allowed; leave set aside. Decisions to prosecute are reviewable only in exceptional circumstances. No arguable case here.

- **Reasoning**:
  - Prosecutorial decisions are reviewable for illegality, irrationality, or procedural impropriety (Wednesbury principles), but relief is rare due to constitutional independence (similar to Jamaica's s. 94).
  - For leave, an applicant must show an arguable case on evidence; judges cannot assume facts as true without scrutiny.
  - Alternative remedies exist: abuse of process arguments in trial. Political pressure claims can be aired there, avoiding fragmentation.
  - Reliance on *R v DPP ex p Kebeline* [2000] 2 AC 326: Review is exceptional; courts defer to DPP's expertise.

- **Significance**: UKPC clarifies high bar for reviewing prosecutions in constitutional democracies. Emphasizes evidence-based leave grants and prefers trial resolution for defenses. Influential in Commonwealth (e.g., cited in Malaysian bundles).

3. Matalulu and Another v DPP (Fiji Supreme Court, 2003) – From "BOD_45-73_.pdf"

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- **Facts**: Litigation over a chiefly title (Tui Nadi) led to private perjury complaints under Penal Code s. 117. The DPP took over and entered *nolle prosequi*. Applicants sought review; High Court granted leave, but Court of Appeal dismissed. Appeal to Supreme Court on special leave.

- **Key Issues**:
  - Criteria for special leave in civil vs. criminal matters (Supreme Court Act s. 7(3)).
  - Is the DPP's *nolle prosequi* reviewable under the 1990 Fiji Constitution?
  - Do affidavits in judicial proceedings qualify as perjury under s. 117?

- **Holdings**: Special leave refused (matter civil, no substantial interest). DPP's decision reviewable but only on narrow grounds (e.g., bad faith). Affidavits fall under perjury definition.

- **Reasoning**:
  - The matter is civil (judicial review), requiring "substantial general interest" for leave—none here.
  - Prosecutorial discretion is broad but reviewable for "flagrant impropriety," irrationality, or illegality (citing *Kostuch v AG* (Canada, 1995)). Public interest weighs heavily; courts defer unless abuse shown.
  - Perjury: s. 117 covers false sworn statements in judicial proceedings; affidavits qualify.
  - Distinguishes private prosecutions: DPP can override in public interest.

- **Significance**: Defines "flagrant impropriety" as the review threshold in Fiji. Balances independence with accountability. Cited critically in *Mohit* but adopted in others (e.g., Samoa's *Teo v AG*).

4. Marshall v Director of Public Prosecutions (Jamaica, UK Privy Council, 2007) – From "BOD_22-44_ (1).pdf" and "BOD_22-44_.pdf" (Duplicates)

- **Facts**: Appellant's son (G) was shot by police; coroner's inquest found "criminal responsibility" but no specific charge. DPP decided against prosecution due to insufficient evidence. Appellant sought review, claiming prima facie case existed.

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- **Key Issues**:
  - Scope of review for DPP's non-prosecution under Jamaica Constitution s. 94(6) (independent powers).
  - Was there sufficient evidence for prosecution? Should exhumation be ordered?

- **Holdings**: Appeal dismissed. Review possible in appropriate cases, but no grounds here; decision rational.

- **Reasoning**:
  - s. 94(6) protects independence, but reviewable for bad faith or unreasonableness (citing *Sharma* and *Matalulu*).
  - Evidence insufficient: Conflicting accounts; no prima facie case beyond reasonable doubt. Public interest not served by weak prosecution.
  - Alternative remedies: Private prosecution possible. Exhumation unnecessary.
  - Courts reluctant to substitute judgment; DPP's expertise prevails.

- **Significance**: Affirms limited review in Jamaica, emphasizing evidential thresholds. UKPC stresses deference to DPP unless "exceptional."

5. Roslan Maalik v PP (Malaysia High Court, 2016) – From "Bundle_3part_A_B_and_C_.pdf"

- **Facts**: Appellant convicted under Penal Code s. 354 (outraging modesty). Magistrate initially acquitted at prosecution stage (complainant non-credible), but High Court reversed on appeal. On remand, Magistrate convicted, accepting complainant's testimony. Appeal: Judgment delivered without considering defense submissions.

- **Key Issues**:
  - Violation of fair trial rights (Federal Constitution Art. 5(1); CPC s. 174(b))?
  - Did grounds of judgment show reasoned analysis?

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- **Holdings**: Appeal allowed; retrial ordered. Fair trial breached; conviction unsafe.

- **Reasoning**:
    - Procedural fairness: Magistrate failed to consider submissions, violating natural justice. Contradictory credibility findings on same evidence.
    - Grounds inadequate: No reasoned judgment on facts/law; mere recitation.
    - Not review of DPP, but trial process—retrial warranted to cure breach.

- **Significance**: Malaysian focus on procedural fairness in trials, not direct DPP review. Links to bundles listing similar authorities (e.g., *Dato' Seri Anwar Ibrahim v PP* [2015] 2 MLJ 293).

6. R v DPP ex p Kebeline (UK House of Lords, 1999) – From "BOD-170-256.pdf" and "BOD-84-169.pdf"

- **Facts**: Applicants charged under Terrorism Act for possessing items/information. Challenged DPP's consent to prosecute as unlawful.

- **Key Issues**:
    - Jurisdiction under Supreme Court Act 1981 s. 29(3) (no review of indictment matters).
    - Reviewability of DPP's consent.

- **Holdings**: No jurisdiction; if any, discretion against review. Consent not reviewable absent bad faith.
- **Reasoning**:
    - s. 29(3) bars review affecting Crown Court trials. Challenge intertwined with trial.
    - Prosecutorial consent protects against oppression; review only for irrationality (Wednesbury).
    - Public interest: DPP considers broadly; courts defer.

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- **Significance**: UK benchmark for non-reviewability. Cited extensively in Commonwealth (e.g., in *Sharma*, *Mohit*).

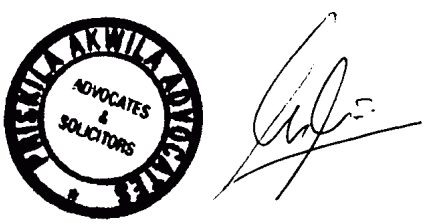
Other Referenced Cases (Briefly)

- **Teo v AG** (Samoa CA, 2002) – From "BOD-84-169.pdf": AG's *nolle prosequi* reviewable only for "flagrant impropriety." Adopts *Matalulu*.
- **Amery v Solicitor General** (NZ CA, 1987): Statutory stay reviewable if abuse of process.
- **R v Power** (Canada SC, 1994): Courts reluctant due to separation of powers and efficiency.
- Lists Malaysian cases like *Nurul Islam v PP* [2016] 12 MLJ 433 (procedural fairness); *Government of India v Petrocon* [2016] 3 MLJ 435 (jurisdiction). These support inherent jurisdiction under Courts of Judicature Act ss. 31-37.

Conclusion: Common Principles and Differences

Across jurisdictions, prosecutorial decisions are presumptively independent (e.g., constitutional protections in Mauritius s. 72, Jamaica s. 94, Fiji 1990 Const.), with review limited to exceptional grounds like bad faith, irrationality, or procedural impropriety. Thresholds vary: "Flagrant impropriety" (Fiji, Samoa) vs. Wednesbury (UK, Trinidad). Courts emphasize public interest, deference, and alternatives (e.g., trial defenses). Malaysian cases add procedural fairness in trials. Differences arise from constitutional structures—e.g., DPP accountability to AG in some (UK, NZ) vs. full independence in others (Mauritius, Jamaica).

Dated this 21st DAY OF FEBRUARY, 2026



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E-KEHAKIMAN SABAH & SARAWAK
Signing Date:20.02.2026 17:25:22 +0800

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This **Written Submission** is filed on behalf of the Applicants by Messrs Priskila Akwila Advocates, whose address for service is at 8-1, 8th Floor, Suria Sabah Shopping Mall, 1, Jalan Tun Fuad Stephens , 88000 Kota Kinabalu, Sabah, Malaysia.

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