

All Presidents, Session Courts
All Magistrates,
West Malaysia.

Registrar's Circular No.. (U)3 of 1981
Postponement of cases

I am directed by the Hon'ble the Chief Justice to draw your attention to the large number of cases that has been postponed in the Subordinate Courts in recent years. It is regreted that some Presidents and Magistrates are in the habit of granting postponement on flimsy and frivolous grounds, either at the instance of the Prosecution, Defence Counsel or the Court itself. This also happen in Civil cases where counsel for the plaintiff or defendant are known to indulge in postponing cases with the connivance of the Court.

2. Presidents and Magistrates are remind that postponing a case already fixed for hearing should be the exception rather than the rule. It is only in exceptional cases that an application for postponement at short notice should be granted, especially in criminal cases because witnesses and the accused persons have to attend court repeatedly causing great inconvenience to members of the public, and wastage of judicial time and public funds, If the Prosecution or the Defence is not ready to proceed with the case after reasonable adjournments have been granted, an accused person should not be allowed to suffer from the dilatoriness of the Prosecutors or Defence Counsel by being left with a charge hanging over his head indefinitely. Where the Prosecution or the Defence are unable to proceed for the time being owing to the difficulty of obtaining a witness or for some other reasonable cause and are able to satisfy the Court that they will proceed with the case within a reasonable time; then a final adjournment should be granted.

3. Presidents and Magistrates may find it difficult to determine what are reasonable grounds for adjournment, and secondly to determine how many adjournment are considered reasonable. Although the granting or refusal of an adjournment is a matter of the Court's discretion, certain guide-lines must be spelt out. The general rule is that if the ground advanced in an application for adjournment is reasonably foreseeable, no postponement should be granted. Conversely, if the reason is not reasonably foreseeable, it should not be refused. It is impossible to give an exhaustive catalogue of all possible instances where adjournment should or should not be granted. Examples where adjournment should be refused include cases where the Prosecuting Officer does not have the Investigating Papers, or the Investigating Officer has failed to complete investigations without any excuse or failed to subpoena witnesses; or he is not free because of other engagements. On the other hand an adjournment should be granted for instance where the Prosecuting Officer or Defence Counsel or any of the material witnesses is suddenly taken ill, or there is difficulty in obtaining a witness.

4. On the number of adjournments that should be granted, the rule is once a case has been fixed for trial, it can only be adjourned once for good cause. Presidents and Magistrates should be reluctant to grant a second adjournment particularly in criminal cases where the accused person is not on bail. Further, once Prosecution has commenced, it should be carried on from day to day until the case is finally disposed of unless some unforeseen circumstance

occur during the trial as to make it absolutely essential to grant an adjournment. To reduce delay and backlog in the Subordinate Courts, Presidents and Magistrates must be firm in exercising their discretion in granting adjournments. In any event, once a date of hearing has been fixed and the parties informed whether in a Civil or criminal matter, a maximum of three (3) adjournments only or one year, whichever is the shorter, should be allowed; except where the accused is not on bail, the case should be disposed of after a maximum of two (2) adjournments only or six months, whichever is the shorter. After that period, if the Prosecution is not ready, the accused should be discharged either amounting to an acquittal or not amounting to an acquittal depending on the circumstances of each case. If the Defence is not ready the case must also proceed as fixed with or without Defence Counsel. In civil cases, if the Plaintiff is not ready the case should be dismissed or struck out; and if the Defendant is not ready, the Plaintiff will proceed to prove its case and obtain judgment.

5. Last but not least, President and Magistrates are also reminded that they or the Court should not be the cause of postponements, especially on flimsy and frivolous grounds. They should always bear in mind that their main duty is to hear and dispose of cases without delay. Therefore, they should not, for example, postpone cases because they want to have staff meetings (which could be held in the afternoon) or to attend to some administrative or personal matters.

t.t.

(SITI NORMA YAAKOB)
CHIEF REGISTRAR.

c.c.

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- 3) Hon'ble the Chief Justice, Borneo, High Court, Kuching, Sarawak;
- 4) Hon'ble Judges of the Federal Court, Malaysia, Kuala Lumpur;
- 5) Hon'ble Judges of the High Court, Malaya, Kuala Lumpur;
- 6) Y.B. Peguam Negara, Malaysia, Jabatan Peguam Negara, Kuala Lumpur;
- 7) Hon'ble the Solicitor-General, Malaysia, Kuala Lumpur;
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- 10) Senior Federal Counsel, Crime Division, AG's Chambers;
- 11) All State Legal Advisors, West Malaysia;
- 12) Registrar, High Court, Borneo, Kuching, Sarawak;
- 13) Deputy Registrar, High Court, Kota Kinabalu, Sabah;
- 14) All Senior Assistant Registrars, High Courts, Malaya;

- 15) All Assistant Registrars, High Court, Malaya;
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