

MALAYSIA
IN THE HIGH COURT OF SABAH AND SARAWAK AT MIRI
ELECTION PETITION NO: MYY-26EP-1/6- 2013

BETWEEN

ROLAND ENGAN [WN KP 721113-13-5965]

Long Jeeh, Ulu Baram,
98050 Baram
Sarawak

... Petitioner

AND

1. ANYI NGAU

...1st Respondent

2. JOSEPH BELAYONG PUNAN

Pegawai Pengurus Pilihan Raya Umum
P.220 Baram Parliamentary Constituency
Care of Baram District Office
98050 Baram, Sarawak

...2nd Respondent

THE ELECTION OFFENCES ACT 1954

**ELECTION FOR THE PARLIAMENTARY CONSTITUENCY OR ELECTORAL
WARD OF BARAM (P.220) IN SARAWAK HELD ON 5TH DAY OF MAY 2013**

THE PETITION OF ROLAND ENGAN [WN KP 721113-13-5965] of Long Jeeh,
Ulu Baram, 98050 Baram, Sarawak, whose name is subscribed.

1. Your humble Petitioner is a person who claims to have had a right to be returned or elected at the general election in the parliamentary constituency or electoral ward of Baram (P.220) in Sarawak, on 5.5.2013, and hence a person entitled to present this election petition to this

Honourable Court by virtue of section 34 (b) of the Election Offences Act 1954.

2. Your humble Petitioner says as follow:

2.1 On 20.04.2013, the nomination and candidature of your Petitioner, nominated candidate for Parti Keadilan Rakyat (PKR), and the candidature of the abovenamed 1st Respondent, as nominated candidate for Barisan Nasional (BN), together with an independent candidate, Patrick Sibat, were accepted by the abovenamed 2nd Respondent and declared by the same abovenamed 2nd Respondent as candidates to contest in the constituency or electoral ward of Baram (P.220) in Sarawak in the said General Election.

2.2 The said General Election was held on 5.5.2013 and the abovenamed 2nd Respondent had declared and announced that the abovenamed 1st Respondent has been returned or elected at the said General Election.

2.3 The results of the said General Election that was held on 5.5.2013 has been gazetted vide Federal Government Gazette Warta Kerajaan Persekutuan P.U. (B) 225 dated 22.5.2013. And the gazetted results for the constituency or electoral ward of Baram (P. 220) in Sarawak shows as follows:

Constituency of P.220 Baram

A -	Total number of electorate	29,385
B -	Total number of ballot papers issued at the poll (as in A in all Form 14 + A in Form 15)	18,796

C - Number of votes by electors for each contesting candidate:

1. Anyi Ngau	BN	9,182
2. Patrick Sibat	BEBAS	363
3. Roland Engan	PKR	8,988

Total number of votes by electors -----
18,533

D - Total number of rejected ballot papers
(as in C in all Form 14 + C in Form 15) 242

E - Total number of ballot papers issued but not put
in the ballot box (as in D in all form 14) and not
returned (as in D in Form 15) (B-C-D) 21

F - Percentage of voting (B/A x 100) 64.0%

G - Majority (the highest votes – second highest votes) 194

3. Your humble Petitioner says that the election and or return of the abovenamed 1st Respondent should be declared to be void by virtue of section 35 (b) and (c) of the Election Offences Act 1954, with the grounds set out hereinafter.

Doubtful dubious and questionable results of postal votes and votes of advance voters

4. Your humble Petitioner says that the abovenamed 2nd Respondent by himself or by his agents or servants had acted in breach of election procedures laws and regulations particularly Regulations 18, 23A, 25, 25A, 25B, 27C, 27D and 27C of the Elections (Conduct of Elections) Regulations 1981, that the breaches had caused the election not to be conducted in accordance with the principles laid down therein and that such non-compliance affected the result of the election, and that the

election shall be declared void under Section 32 (b) of the Election Offences Act 1954:

Particulars

- 4.1 Immediately after the close of nomination on 20.4.2013, your Petitioner and his election agent were invited and were present for a briefing conducted by the 2nd Respondent, which inter alia, was notified that counting of postal votes and votes of advance voters shall be at the main tally centre at Dewan Suarah Marudi commencing at 5.00pm on 5.5.2013.
- 4.2 There had been no notice issued by the 2nd Respondent to your Petitioner or his election agent specifying the time and place for the counting of postal votes and votes of advance voters but there was a notice issued by the 2nd Respondent to your Petitioner or his election agent notifying that the tallying of all valid votes including votes and votes of advance voters to commence at 5.00pm on 5.5.2013, at the Dewan Suarah Marudi.
- 4.3 The election agent and polling agents of your Petitioner were present at the issuance of the postal ballots at Rumah PERKEP IPD Marudi on 30.04.2013 and the issuance of postal ballots and voting of the advanced voters at Rumah PERKEP IPD Marudi on 30.04.2013 carried out therein thereat, and at and on none of these occasions had the election agent or polling agents of your Petitioner being notified by the 2nd Respondent or his agents or servants of any change in the schedule for the opening of ballot boxes and counting of postal votes and votes of advance voters.

- 4.4 After the voting of the advanced voters, the polling agents of your Petition had formally expressed concerns to the 2nd Respondent or his agents or servants that the adhesion and or seal on the ballot boxes and the ballot boxes containing votes of the advanced voters can be opened and resealed or rebounded together and thereby questioned and doubted the security of the ballot papers in these ballot boxes that the same are not secured and may be tampered or manipulated.
- 4.5 On 30.04.2013 at or about 5.00pm at the Marudi District Police Station where the ballot boxes containing the votes of the advanced voters were kept stowed or stored, the polling agents of your humble Petitioner were not allowed permitted and or given access to watch over inspect and or mind these ballot boxes even though the 2nd Respondent his agents and servants had earlier repeatedly assured warranted and guaranteed the polling agents of your humble Petitioner that they are allowed permitted and or be given access to watch over inspect and or mind these ballot boxes at the said Marudi District Police Station.
- 4.6 From the 30.04.2013 to 5.5.2013, your Petitioner and or his polling agents were never allowed or permitted or be given access to watch over inspect and or mind these ballot boxes that contain the ballot papers and votes of the advanced voters. The 2nd Respondent his agents and servants had not at any time notify or inform your Petitioner or his election agent and or his polling agents that specified efforts and procedural measures were undertaken to ensure the secured custody of these ballot boxes and that the same shall not be tampered or manipulated.

- 4.7 On 5.5.2013 and at the time unknown to your Petitioner and or his election agent and or his polling agents and counting agents, the ballot boxes that contain the ballot papers and votes of the advanced voters were brought to the main tally centre the Dewan Suarah Marudi without your Petitioner and or his election agent and or his polling agents and counting agents being notified or informed and neither were them being given the opportunity to observe and inspect the process and or the movement and transfer of these ballot boxes.
- 4.8 On 5.5.2013 at or about 2.50pm, the election agent and counting agents of your Petitioner was notified and informed by an anonymous or unknown caller who was at the Dewan Suarah Marudi that the 2nd Respondent his agents and servants had opened the ballot boxes that contain the ballot papers and votes of the advanced voters and that the counting of these votes had already commenced.
- 4.9 By the time the election agent and counting agents of your Petitioner arrived at the Dewan Suarah Marudi at or about 3.00pm, he was informed that the counting and tallying of the votes of the advanced voters had been completed and that your Petitioner had obtained only 3 votes out of the total 81 valid votes, or **3.70%** of the valid votes of the advanced voters.
- 4.10 At the same time, the same election agent and counting agents of your Petitioner also found out that the counting and tallying of the postal votes had commenced and been completed and that your Petitioner had obtained only 14 votes out of the total 76 valid votes, or **18.42%** of the valid votes of postal voters.

- 4.11 It is doubtful and questionable where were the postal votes and votes of advance voters counted. On 6.5.2013, a counting agent of your humble Petitioner was told that the counting of the postal votes and votes of advance voters were conducted at the Rumah PERKEP IPD Marudi commencing at or about noontime on 5.5.2013.
- 4.12 The abovenamed 2nd Respondent by himself or by his agents or servants had acted in contravention of provisions of election procedures laws and regulations and the principles laid down therein thereto as your Petitioner and his election agent and polling and counting agents had never being informed or notified when the postal ballots have been kept and or stored and the time they were brought to the Dewan Suarah Marudi or Rumah PERKEP IPD Marudi for the purpose of opening and counting. Further and in addition, your Petitioner and his election agent and polling and counting agents had never being informed or notified of the change in the time schedule for the counting of postal votes.
- 4.13 For the valid ordinary votes by electors, your Petitioner had obtained 8971 votes out of the total 18376 votes, or **48.82%** of the total valid votes polled by all the candidates. The abovenamed 1st Respondent had obtained 9042 votes or **49.21%** of the total valid votes whereas the independent candidate described above had obtained 363 votes or **1.98%** of the total valid votes.
- 4.14 It is clear and obvious that there is abnormality irregularity anomaly in the gulf of difference in the support and hence valid votes obtained by your Petitioner amongst the postal voters, advance voters and the ordinary electors showing that there is a prima facie case that the ballot boxes and or the ballot papers or votes of the

postal voters and advance voters and or the scheduled Form 14 for the postal voters and advance voters have been disturbed tempered or manipulated to enable and or to be contributed to the abovenamed 1st Respondent to be elected and or returned in this election with a slim majority of 194 votes.

- 4.15 In accordance with the same degree of support and hence valid votes obtained by your Petitioner amongst the ordinary electors or voters, your Petitioner should have obtained 37 votes from the postal voters and 40 voters from the advance voters. Similarly, the abovenamed 1st Respondent should also obtained 37 votes from the postal voters and 40 voters from the advance voters. It is wholly and completely wrong irregular and extraordinary for the abovenamed 1st Respondent to record a majority of 123 votes from the total valid postal votes and votes of advance voters.
- 4.16 Your humble Petitioner says that this Honourable Court is clothed with the power and jurisdiction to make an Order that the postal ballots and ballots or votes of advance voters and other documents including the scheduled Form 14 which has been kept in custody of the State Election Officer be inspected, copied and or produced at such time and place deem expedient by this Honourable Court to ascertain that the postal ballots and ballots or votes of advance voters and other documents including the scheduled Form 14 were not being disturbed tempered and or manipulated.
- 4.17 Your Petitioner reserves the right to make any application for the disclosure and/or inspection of any documents before and/or during the hearing of this election petition to prove the matters above.

Disenfranchised voters – Kampung Long Item

5. Your humble Petitioner says that the abovenamed 2nd Respondent by himself or by his agents or servants had directly or caused to commit an act of illegal practice or acted in breach of election procedures laws and regulations particularly Regulations 11(5) and 29 of the Elections (Conduct of Elections) Regulations 1981, that the breaches had caused the election not to be conducted in accordance with the principles laid down therein and that such non-compliance affected the result of the election, and that the election shall be declared void under Section 32 (b) of the Election Offences Act 1954:

PARTICULARS

- 5.1 That on the 5.5.2013 at or about 10.30 am, at the scheduled polling station described and known of SK Long Luteng Patah, 5 eligible voters (hereinafter referred to as “the 5 said voters”), whose names are (a) Rebika Ting (WN KP 860609-13-5264), (b) Lydia Balan (WNKP 760423-13-5276), (c) Tat Ting (WN KP 641110-13-5708), (d) Ronnie Madang Emang (WN KP 850712-13-6389) and (e) Ayub Kujan (WN KP 621220-13-5567), who are voters residing at Kampung Long Item which is situated an hour drive from the aforesaid polling station described and known of SK Long Luteng Patah. They discovered upon arrival the presence of a long queue of voters going into the polling centre.
- 5.2 The said 5 voters had joined the long queue and had their identity verified and confirmed that they are eligible voters at the polling centre and were waiting in the queue for ballot papers to be issued to them.

- 5.3 Suddenly and while the 5 said voters were in front of the agents and or servants of the 2nd Respondent, it was announced by these election officers that the time was 11.00am and that the said polling station described and known of SK Long Luteng Patah was promptly closed and that there would be no more voting for those waiting, including the 5 said voters.
- 5.4 The said 5 voters approached the agents or servants of the 2nd Respondent to demand their rights to vote and the reason why they were barred from casting their votes. All the said 5 voters are eligible voters whose names are listed in the electoral roll and hold a valid identity card. The reason given by the agents or servants of the 2nd Respondent was that the polling station was closed regardless of the number of the public still queuing and waiting for their turns to cast their votes at the time the agents or servants of the 2nd Respondent closed the said polling station described and known of SK Long Luteng Patah.
- 5.5 It was unknown whether it was 11.00am when the agents or servants of the 2nd Respondent closed the said polling station described and known of SK Long Luteng Patah.
- 5.6 It is to your Petitioner's knowledge that a number of notices were posted within the perimeter of the said polling station described and known of SK Long Luteng Patah specifying, inter alia, the hours between which this polling centre will be opened.
- 5.7 It has come to your Petitioner's knowledge that no notices were posted by the 2nd Respondent and or his agents or servants in Kampung Long Item, that the said 5 voters were not informed of the

polling hours for the said polling station described and known of SK Long Luteng Patah.

- 5.8 Further, as a consequence of absence of notice, not only were the eligible voters from Kampung Long Item prevented from casting their votes as above, there are a number of eligible voters who had wanted to vote but did not turn up at all.
- 5.9 The said 5 voters had complained to the agents or servants of the 2nd Respondent that the introduction of the indelible ink has caused setbacks to the polling process in the said polling station described and known of SK Long Luteng Patah, as application of the ink had inadvertently slowed down and delayed the whole process of voting and the 2nd Respondent and or his agents or servants should have taken this into account in their computation of polling hours to ensure that all eligible voters are able to successfully cast their votes.
- 5.10 It is to the Petitioner's knowledge that had the said 5 voters been allowed to exercise their rights to vote, their votes would have been for the Petitioner.
- 5.11 A police report had been subsequently lodged by one of the said 5 voters, namely Ayub Kujan (WN KP 621220-13-5567), on the 3.06.2013, at Long Lama Police Station with regards to the occurrences at the said polling station described and known of SK Long Luteng Patah.
- 5.12 Regulation 29 of the Elections (Conduct of Elections) Regulations 1981 requires that the 2nd Respondent and/or by his agents or servants exhibit copies of the notice (as required in this instance

under Regulation 11(5) of the Elections (Conduct of Elections) Regulations 1981) in conspicuous places within the constituency to which the notice relates or take such other steps as may be deemed by the 2nd Respondent necessary for giving due publicity thereto. As the eligible voters in Long Item are voting in another kampung and they have had no access to mass media and telecommunication, it is necessary for the 2nd Respondent and/or by his agents or servants to put up the notice in Kampung Long Item. Your Petitioner says that 20 or more eligible voters in Kampung Long Item were affected by the absence of notices and failed to cast their votes as a consequence thereof.

- 5.13 Further, your Petitioner says that the 2nd Respondent had committed a fundamental breach of his constitutional primary and sacred duty to ensure that all eligible voters are able to exercise their rights to vote freely.
- 5.14 Failure of the 2nd Respondent and/or by his agents or servants to exhibit such notices in Kampung Long Item and to give due publicity thereto to the notice are not in adherence to Regulation 29 of the Elections (Conduct of Elections) Regulations 1981 and the election shall be declared null and void for the Constituency of P. 220 Baram in accordance with section 32(b) Election Offences Act 1954.
- 5.15 Your Petitioner reserves the right to make any application for the disclosure and/or inspection of any documents before and/or during the hearing of this election petition to prove the matters above.

Disenfranchised voters – Kampung Long Lilim

6. Your humble Petitioner says that the abovenamed 2nd Respondent by himself or by his agents or servants had directly or caused to commit an act of illegal practice or acted in breach of election procedures laws and regulations particularly Regulations 11(5) and 29 of the Elections (Conduct of Elections) Regulations 1981, that the breaches had caused the election not to be conducted in accordance with the principles laid down therein and that such non-compliance affected the result of the election, and that the election shall be declared void under Section 32 (b) of the Election Offences Act 1954:

PARTICULARS

- 6.1 That on the 5.5.2013 at or about 10.30 am, at the scheduled polling station described and known of SK Long Luteng Patah, 25 eligible voters (hereinafter referred to as “the said 25 voters”), whose names are (a) Remia Jalong (WNKP 780612-13-6153) (b) Jimy Uka (WNKP 861026-13-5419), (c) Lupang Siwai (WNKP 660704-13-6066), (d) Mega Wat (720628-13-6305), (d) Wilson Yok (WNKP 870326-13-5335), (e) Matius Kapong (WNKP 850806-13-6611), (f) Lasun Paren (WNKP 480319-13-5114), (g) Lasia Ding (WNKP 820419-13-5611), (h) Jalong Wat (WNKP 610321-13-5829), (i) Neri Ngot (WNKP 790705-13-6098), (j) Ngot Laing (WNKP 491026-13-5253), (k) Savang Gung (WNKP 600803-13-5902), (l) Ika Hung (WNKP 621231-13-8384), (m) Melissa Ngot (860122-13-5860), (n) Philip Eden (WNKP 770101-13-5555), (o) Gadong Ngok (WNKP 770618-13-5224), (p) Ibrahem Jalong (WNKP 830705-13-6331), (q) Bato Pedeeng (740404-13-5379), (r) Uluk Siwai (WNKP 680614-13-5594), (s) Akok Pedeeng (WNKP 631231-13-7612), (t) Mazmut Eden (WNKP 790626-13-6073), (u) Serena Sut (WNKP 800721-13-6211), (v)

Masi Galai (WNKP 681212-13-5975), (w) Regina Yok (WNKP 800218-13-5932), (x) Henderi Ngot (WNKP 820410-13-6351) and (y) Libai Yok (WNKP 760330-13-5226), who are voters residing at Kampung Long Lilim which is situated some 40 minutes drive from the aforesaid polling station described and known of SK Long Luteng Patah. They discovered upon arrival the presence of a long queue of voters going into the polling centre.

- 6.2 The said 25 voters had joined the long queue and had their identity verified and confirmed that they are eligible voters at the polling centre and were waiting in the queue for ballot papers to be issued to them.
- 6.3 Suddenly and while the 25 said voters were in front of the agents and or servants of the 2nd Respondent, it was announced by these election officers that the time was 11.00am and that the said polling station described and known of SK Long Luteng Patah was promptly closed and that there would be no more voting for those waiting, including the 25 said voters.
- 6.4 The said 25 voters approached the agents or servants of the 2nd Respondent to demand their rights to vote and the reason why they were barred from casting their votes. All the said 25 voters are eligible voters whose names are listed in the electoral roll and hold a valid identity card. The reason given by the agents or servants of the 2nd Respondent was that the polling station was closed regardless of the number of the public still queuing and waiting for their turns to cast their votes at the time the agents or servants of the 2nd Respondent closed the said polling station described and known of SK Long Luteng Patah.

- 6.5 It was unknown whether it was 11.00am when the agents or servants of the 2nd Respondent closed the said polling station described and known of SK Long Luteng Patah.
- 6.6 It is to your Petitioner's knowledge that a number of notices were posted within the perimeter of the said polling station described and known of SK Long Luteng Patah specifying, inter alia, the hours between which this polling centre will be opened.
- 6.7 It has come to your Petitioner's knowledge that no notices were posted by the 2nd Respondent and or his agents or servants in Kampung Long Lilim, that the said 25 voters were not informed of the polling hours for the said polling station described and known of SK Long Luteng Patah.
- 6.8 Further, as a consequence of absence of notice, not only were the eligible voters from Kampung Long Lilim prevented from casting their votes as above, there are a number of eligible voters who had wanted to vote but did not turn up at all.
- 6.9 The said 25 voters had complained to the agents or servants of the 2nd Respondent that the introduction of the indelible ink has caused setbacks to the polling process in the said polling station described and known of SK Long Luteng Patah, as application of the ink had inadvertently slowed down and delayed the whole process of voting and the 2nd Respondent and or his agents or servants should have taken this into account in their computation of polling hours to ensure that all eligible voters are able to successfully cast their votes.

- 6.10 It is to the Petitioner's knowledge that had the said 25 voters been allowed to exercise their rights to vote, their votes would have been for the Petitioner.
- 6.11 A police report was subsequently lodged by one of the said 25 voters, namely Ngot Liang (WNKP 491026-13-5253) on the 3.06.2013, at Sungai Long Lama Police Station with regards to the occurrences at the said polling station described and known of SK Long Luteng Patah.
- 6.12 Regulation 29 of the Elections (Conduct of Elections) Regulations 1981 requires that the 2nd Respondent and/or by his agents or servants exhibit copies of the notice (as required in this instance under Regulation 11(5) of the Elections (Conduct of Elections) Regulations 1981) in conspicuous places within the constituency to which the notice relates or take such other steps as may be deemed by the 2nd Respondent necessary for giving due publicity thereto. As the eligible voters in Long Lilim are voting in another kampung and they have had no access to mass media and telecommunication, it is necessary for the 2nd Respondent and/or by his agents or servants to put up the notice in Kampung Long Lilim. Your Petitioner says that 30 or more eligible voters in Kampung Long Lilim were affected by the absence of notices and failed to cast their votes as a consequence thereof.
- 6.13 Further, your Petitioner says that the 2nd Respondent had committed a fundamental breach of his constitutional primary and sacred duty to ensure that all eligible voters are able to exercise their rights to vote freely.

6.14 Failure of the 2nd Respondent and/or by his agents or servants to exhibit such notices in Kampung Long Lilim and to give due publicity thereto to the notice are not in adherence to Regulation 29 of the Elections (Conduct of Elections) Regulations 1981 and the election shall be declared null and void for the Constituency of P. 220 Baram in accordance with section 32(b) Election Offences Act 1954.

6.15 Your Petitioner reserves the right to make any application for the disclosure and/or inspection of any documents before and/or during the hearing of this election petition to prove the matters above.

Disenfranchised voters – Kampung Long Miri

7. Your humble Petitioner says that the abovenamed 2nd Respondent by himself or by his agents or servants had directly or caused to commit an act of illegal practice or acted in breach of election procedures laws and regulations particularly Regulations 11(5) and 29 of the Elections (Conduct of Elections) Regulations 1981, that the breaches had caused the election not to be conducted in accordance with the principles laid down therein and that such non-compliance affected the result of the election, and that the election shall be declared void under Section 32 (b) of the Election Offences Act 1954:

PARTICULARS

7.1 That on the 5.5.2013 at or about 10.30 am, at the scheduled polling station described and known of SK Long Miri Baram, 35 eligible voters (“the said 35 voters”), discovered upon arrival the presence of a long queue of voters going into the polling centre.

- 7.2 The said 35 voters had joined the long queue and had their identity verified and confirmed that they are eligible voters at the polling centre and were waiting in the queue for ballot papers to be issued to them.
- 7.3 Suddenly and while the said 35 voters were in front of the agents and or servants of the 2nd Respondent, it was announced by these election officers that the time was 11.30am and that the said polling station described and known of SK Long Miri Baram was promptly closed and that there would be no more voting for those waiting, including the 35 said voters.
- 7.4 The said 35 voters approached the agents or servants of the 2nd Respondent to demand their rights to vote and the reason why they were barred from casting their votes. All the said 35 voters are eligible voters whose names are listed in the electoral roll and hold a valid identity card. The reason given by the agents or servants of the 2nd Respondent was that the polling station was closed regardless of the number of the public still queuing and waiting for their turns to cast their votes at the time the agents or servants of the 2nd Respondent closed the said polling station described and known of SK Long Miri Baram.
- 7.5 It was unknown whether it was 11.00am when the agents or servants of the 2nd Respondent closed the said polling station described and known of SK Long Miri Baram.
- 7.6 It is to your Petitioner's knowledge that a number of notices were posted within the perimeter of the said polling station described and known of SK Long Miri Baram specifying, inter alia, the hours between which this polling centre will be opened.

- 7.7 It has come to your Petitioner's knowledge that no notices were posted by the 2nd Respondent and or his agents or servants in conspicuous areas of Kampung Long Miri, that the said 35 voters were not informed of the polling hours for the said polling station described and known of SK Long Miri, Baram.
- 7.8 Further, as a consequence of absence of notice, not only were the eligible voters from Kampung Long Miri Baram prevented from casting their votes as above, there are a number of eligible voters who had wanted to vote but did not turn up at all.
- 7.9 The said 35 voters had complained to the agents or servants of the 2nd Respondent that the introduction of the indelible ink has caused setbacks to the polling process in the said polling station described and known of SK Long Miri Baram, as application of the ink had inadvertently slowed down and delayed the whole process of voting and the 2nd Respondent and or his agents or servants should have taken this into account in their computation of polling hours to ensure that all eligible voters are able to successfully cast their votes.
- 7.10 It is to the Petitioner's knowledge that had the said 35 voters been allowed to exercise their rights to vote, their votes would have been for the Petitioner.
- 7.11 A police report had been subsequently lodged by one of the said 5 voters, namely Billy Ngau (WNKP 621220-13-5567), on the 08.05.2013, at Long Lama Police Station with regards to the occurrences at the said polling station described and known of SK Long Miri, Baram.

- 7.12 Regulation 29 of the Elections (Conduct of Elections) Regulations 1981 requires that the 2nd Respondent and/or by his agents or servants exhibit copies of the notice (as required in this instance under Regulation 11(5) of the Elections (Conduct of Elections) Regulations 1981) in conspicuous places within the constituency to which the notice relates or take such other steps as may be deemed by the 2nd Respondent necessary for giving due publicity thereto. As the eligible voters in Kampung Long Miri have had no access to mass media and telecommunication, it is necessary for the 2nd Respondent and/or by his agents or servants to put up the notice around conspicuous places in Kampung Long Miri. Your Petitioner says that 40 or more eligible voters in Kampung Long Miri were affected by the absence of notices and failed to cast their votes as a consequence thereof.
- 7.14 Further, your Petitioner says that the 2nd Respondent had committed a fundamental breach of his constitutional primary and sacred duty to ensure that all eligible voters are able to exercise their rights to vote freely.
- 7.15 Failure of the 2nd Respondent and/or by his agents or servants to exhibit such notices in conspicuous places and to give due publicity thereto to the notice are not in adherence to Regulation 29 of the Elections (Conduct of Elections) Regulations 1981 and the election shall be declared null and void for the Constituency of P.220 Baram in accordance with section 32(b) Election Offences Act 1954.
- 7.16 Your Petitioner reserves the right to make any application for the disclosure and/or inspection of any documents before and/or during the hearing of this election petition to prove the matters above.

Breaches and irregularities in official addition of votes

8. That the abovenamed 2nd Respondent and/or by his agents or servants had directly and or caused to commit an act of illegal practice in connection with the election in the said constituency of P.220 Baram by failing to adhere to the Regulations 25D(2) and 25D(4) of the Elections (Conduct of Elections) Regulations 1981, that the breaches had caused the election not to be conducted in accordance with the principles laid down therein and that such non-compliance affected the result of the election, and that the election shall be declared void under Section 32 (b) of the Election Offences Act 1954:

PARTICULARS

- 8.1 Your Petitioner and his election agent, on 20.04.2013 and right after your Petitioner's nomination as candidate was officially accepted, were invited and did attended a briefing chaired by the abovenamed 2nd Respondent.
- 8.2 The abovenamed 2nd Respondent had made announcement at this briefing which, inter alia, the tallying of votes or official addition of votes will commence at 5.00 pm on 5.5.2013.
- 8.3 Pursuant to this announcement, a polling agent of your Petitioner, namely Zainal Bin Wasli (WN KP 610802-71-5621), had received a call on 03.05.2013 from the Returning Officer Office requesting for a list of 30 names of party's representative to observe the tallying or official addition of votes to be held at Dewan Suarah Marudi on 5.5.2013. The said polling agent of your Petitioner, Zainal Bin Wasli, had immediately prepared and submitted the list requested and

sent it to the Returning Officer's Office on the same day of receiving the calls and the list was approved later in that same day. Prior to receiving the call, your Petitioner's operation room in Marudi had received a notification by the 2nd Respondent stating that the tallying will begin at 5.00pm at the Dewan Suarah Marudi on 5.5.2013.

- 8.4 No other notice were given subsequent to this aforementioned notice stating that there were going to be any changes made to the time of tallying or official addition of votes.
- 8.5 On 5.5.2013, your Petitioner's Election Agent arrived and attended to the Dewan Suarah Marudi at or about 3.00 pm, 2 hours earlier than the time appointed for the start of the tallying or official addition of votes. Upon his arrival, he was surprised that the tallying or official addition of votes had already commenced, since 12.00 noon, even though numerous polling stations in the constituency or electoral ward were still opened for voting at that time.
- 8.6 Your Petitioner says that neither he nor his election agent or any of his polling and counting agents had been informed or notified that the tallying would commence by the 2nd Respondent and/or by his agents or servants at that unscheduled time and that the tallying would proceed despite the absence of your Petitioner or his election agent or polling and counting agents.
- 8.7 The tallying or official addition of votes was irregular, wrong and illegal as it had commenced earlier than scheduled and was done without the presence of your Petitioner or his election agent or polling and counting agents.

- 8.8 By the time your Petitioner's election agent and polling and counting agents arrived at the tallying centre, it was discovered and found that the sealed envelopes containing the scheduled Form 14 from numerous polling centres and elsewhere were opened by the 2nd Respondent and/or by his agents or servants in congruent to the tallying of votes.
- 8.9 Further, upon opening the sealed envelope containing the official statements of the poll delivered by each presiding officers of the respective polling stations, the 2nd Respondent and/or his agents or servants failed to announce the number of votes recorded by each candidate in the presence of your Petitioner or his election agent or polling or counting agents. Instead, the official addition of votes was directly recorded and the tallying proceeded without the same being shown or announced to your Petitioner or his election agent or polling or counting agents.
- 8.10 A police report was subsequently lodged by your Petitioner's polling and counting agent, Zainal Bin Wasli (WN KP 610802-71-5621), on the 14.05.2013, at Pejabat IPD Marudi with regards to the matters stated in the preceding paragraphs.
- 8.11 Another Police Report was subsequently lodged by the Petitioner on the 27th May 2013 at the Pusat Miri Police Station, to report on similar matters as the one in sub-paragraph 8.11 hereinabove.
- 8.12 The 2nd Respondent and/or by his agents or servants has failed to abide with Regulation 25D (2) of the Elections (Conduct of Elections) Regulations 1981 which requires the 2nd Respondent and/or by his agent or servants to inform your Petitioner and/or your Petitioner's election agent of the time and place at which the 2nd

Respondent and/or by his agents or servants will commence to add up the number of votes given to each candidate.

8.13 The absence of your Petitioner and/or your Petitioner's election agent during the official addition of votes is contrary with Regulation 25D (4) of the Elections (Conduct of Elections) Regulations 1981. Regulation 25D (4) requires that the 2nd Respondent open the special envelope and examine the statement therein and announce the number of votes recorded for each candidate in the presence of your Petitioner and/or your Petitioner's election agent.

8.14 Failure of the 2nd Respondent and/or his agents or servants to adhere to the Regulations 25D (2) and 25D (4) of the Elections (Conduct of Elections) Regulations 1981 calls into question the integrity and correctness of the official addition of votes and had caused the election not to be conducted in accordance with the principles laid down therein the laws and regulations and that such non-compliance affected the result of the election, and that the election should therefore be declared void under Section 32 (b) of the Election Offences Act 1954.

8.15 The Petitioner reserves the right to make any application for the disclosure and/or inspection of any documents before and/or during the hearing of this election petition to prove the matters above.

Failure to adhere to the Election regulations during and after counting of votes

9. That the abovenamed 2nd Respondent and/or by his agents or servants had directly and or caused to commit an act of illegal practice in connection with the election in the said constituency of P.220 Baram by

failing to adhere to the Regulations 25(12)(b) of the Elections (Conduct of Elections) Regulations 1981, the breach had caused the election not to be conducted in accordance with the principles laid down therein and that such non-compliance affected the result of the election, and that the election shall be declared void under Section 32 (b) of the Election Offences Act 1954.

PARTICULARS

- 9.1 On 5.5.2013, at about 12.00pm, at SK Long Miri Baram Polling Station, the polling agents of your Petitioner, namely Saging Ngau (WNKP 620615-13-5831) and Ajeng Ngau Wan (WNKP 670809-13-5325), after the completion of the counting of votes, proceeded to request for the scheduled Form 14 from the agent or servant of the 2nd Respondent. The agent or servant of the 2nd Respondent failed to supply the Form 14 despite repeated requests by the polling agents of your Petitioner. A police report has been lodged by one of your Petitioner's polling agent, namely Saging Ngau (WNKP 620615-13-5831), on the 8.05.2013 at the Long Lama Police Station to complain of this matter.

- 9.2 On 5.5.2013, at SK Lenei Baram Polling Station, the polling agent of your Petitioner, namely Sumping anak Bandang (WNKP 650811-13-5529), had asked from the presiding officer of the aforementioned Polling Station who had refused to deliver to your Petitioner's polling agent a completed scheduled Form 14 despite repeated demands. A police report has been lodged by the polling agent as abovenamed on the 11.05.2013, at the Marudi Police Station on this matter.

- 9.3 On 5.5.2013, at about 12.00 pm, at SK Poyut Polling Station, the polling agent of your Petitioner, namely Lian anak Ngabong (WNKP 551231-13-5473), after the completion of the counting of votes, had requested but failed to obtain from the presiding officer of the abovementioned Polling Station, the scheduled Form 14. A police report has been lodged by the said polling agent as abovenamed on the 12.05.2013, at the Marudi Police Station on this matter.
- 9.4 On 5.5.2013, at about 11.00 am, at Rumah Jugah, Sg. Belasoi Polling Station, the polling agent of your Petitioner, namely Juki anak Melina (WN KP 740729-13-5625), after the completion of the counting of votes, failed to acquire the scheduled Form 14 from the presiding officer at the aforementioned Polling Station. A police report has been lodged by the said polling agent of your Petitioner as abovenamed on the 12.05.2013, at the Marudi Police Station on this matter.
- 9.5 On 5.5.2013, at about 2.00pm, at SK Long Pilah Baram Polling Station, the polling agents of your Petitioner, namely Alfred Laeng Ngau (WN KP 570910-13-5671) and Ngau Jok (WN KP 460302-13-5187), after the completion of the counting of votes, proceeded to request the scheduled Form 14 from the presiding officer of the abovenamed Polling Station. The presiding officer had failed to supply the Form 14 despite repeated requests by the Polling Agents. A police report on this breach by the 2nd Respondent's agent or servant had been lodged by Alfred Laeng Ngau (WNKP 570910-13-5671), on 13.05.2013.
- 9.6 On 5.5.2013, at about 1.00pm, at the SK Long Jeeh Polling Station, the polling agent of your Petitioner, namely Disa Lawai (WNKP

580924-13-5567), after the completion of the counting of votes, failed to acquire the scheduled Form 14 after repeated demands to the presiding officer at the aforementioned Polling Station. A police report has been lodged by the same polling agent as abovenamed on 14.05.2013, at the Pusat Miri Police Station.

- 9.7 On 5.5.2013, at Ng. Tisam Polling Station, the polling agent of your Petitioner, namely Rengga Anak Badi (WN KP 650616-13-5435) after the completion of the counting of votes, failed to acquire the scheduled Form 14 after repeated demands to the presiding officer at the aforementioned Polling Station. A police report has been lodged by the same polling agent as abovenamed on 09.05.2013, at the Pusat Miri Police Station.
- 9.8 Failure of the 2nd Respondent and/or by his servants and agents to carry out their duties to deliver the scheduled Form 14 to the polling agents of your Petitioner at the respective polling stations enumerated hereinabove, had breached or contravened Regulation 25(12) of the Elections (Conduct of Elections) Regulations 1981 and therefore the election was not conducted in accordance with the principles laid down in such written law, and the election should be declared void for the Constituency of P.220 Baram in accordance with section 32(b) Election Offences Act 1954.
- 9.9 The Petitioner reserves the right to make any application for the disclosure and/or inspection of any documents before and/or during the hearing of this election petition to prove the matters above.

Corrupt or Illegal Practice by An Agent Of The Candidate

10. Your humble Petitioner says that the abovesaid 1st Respondent had through his agent or servant the Ketua Kaum Apoi Ukeng resorted to vote-buying by giving cash money to the voters in Kampung Long Jeeh, have thereby committed a corrupt practice or illegal practice in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate, that the election shall be declared void under Section 32 (c) of the Election Offences Act 1954:

Particulars

- 10.1 On 4.5.2013 at or about 8.00pm, the village headman of Kampung Long Jeeh Ketua Kaum Apoi Ukeng together with his team of members who are the members of the Kampung Committee visited many families in Kampung Long Jeeh, offering cash money of RM100.00 to individual voters for them to vote for the abovenamed 1st Respondent.
- 10.2 Ketua Kaum Apoi Ukeng is the polling agent for the abovenamed 1st Respondent in the polling centre known and described as Sekolah Kebangsaan Long Jeeh.
- 10.3 Claiming that the cash money comes from the abovenamed 1st Respondent and Barisan Nasional, Ketua Kaum Apoi Ukeng gave RM100.00 to each individual voter who he described and termed "Ilu BN". (certain to vote BN). For those who he was not certain that they will vote for your Petitioner or the abovenamed 1st Respondent, he gave RM50.00 to each of these individual voters and promised to deliver another RM50.00 to the same individual voters which he did deliver on the evening of 5.5.2013. In the case of numerous others, he promised to give the entire sum of RM100.00 to those individual voters if the abovenamed 1st

Respondent and thus Barisan Nasional (BN) received more votes at the polling centre known and described as Sekolah Kebangsaan Long Jeeh in this election. He did deliver this sum of RM100.00 to these individual voters in the evening of 5.5.2013. Nothing is given to the “Ilu Keadilan” (those certain to vote for your Petitioner, as candidate for PKR).

- 10.4 The abovenamed 1st Respondent and Ketua Kaum Apoi Ukeng is fully aware that they cannot win the majority of the support or votes at the polling centre known and described as Sekolah Kebangsaan Long Jeeh, not only because the abovenamed 1st Respondent have less support in Kampung Long Jeeh, Kampung Long Jeeh has many individuals who are members of community voluntary groups of Save River Network in Baram which are against the construction of Baram Dam.
- 10.5 One known villager of Kampung Long Jeeh was given RM100.00 by Ketua Kaum Apoi Ukeng but he returned the money and he told Ketua Kaum Apoi Ukeng that he would no longer vote for BN because he cannot support the construction of Baram Dam, and that he would vote for your Petitioner to save the ancestral land of his own and the whole community.
- 10.6 Without the vote-buying or enticing of the voters with this RM100.00 per individual voter, the abovenamed 1st Respondent could not have obtain more votes than your Petitioner. It is your Petitioner’s estimation that he will obtained above 60% of the votes polled at the polling centre known and described as Sekolah Kebangsaan Long Jeeh because more than 60% of the villagers of Kampung Long Jeeh, Long Silat and Long Selawen had signed the petition

appealing for the construction of the Baram Dam be stopped and abandoned.

10.7 Out of the total votes of 254 polled at the polling centre known and described as Sekolah Kebangsaan Long Jeeh, your Petitioner obtained 112 votes, the abovenamed 1st Respondent polled 141 votes while the independent candidate has 1 vote.

10.8 In accordance with the same degree of support for the petition appealing for the construction of the Baram Dam be stopped and abandoned, and hence valid votes obtained by your Petitioner amongst the ordinary electors or voters who casted their votes at the polling centre known and described as Sekolah Kebangsaan Long Jeeh, your Petitioner should have obtained 152 votes in the least and the abovenamed 1st Respondent would polled 102 votes at most. It is unreasonable irregular and extraordinary for the abovenamed 1st Respondent to record a majority of 29 votes from the total valid votes polled at the polling centre known and described as Sekolah Kebangsaan Long Jeeh. Your humble Petitioner should have polled 50 more votes than the abovenamed 1st Respondent in this polling centre.

Collective and cumulative effect and or consequence

11. In consequence of the abovesaid grounds, enumerated in Paragraphs 3 to 10 including all the sub-paragraphs therein thereat, your Petitioner says that the 1st Respondent and the 2nd Respondent, by themselves jointly or severally, had breach and contravene election procedures laws and regulations, that the breaches had caused the election not to be conducted in accordance with the principles laid down therein and that

such non-compliance affected the result of the election, and that the election shall be declared void under section 32 (b) and or section 32 (c) of the Election Offences Act 1954.

WHEREFOR YOUR PETITIONER MOVES this petition under the Election Offences Act, 1954 and prays for:-

- (a) A declaration that the general election for the Parliamentary constituency or electoral ward of Baram (P.220) in Sarawak which was held on 5.5.2013 is void;
- (b) A declaration that the abovenamed 1 Respondent was not duly elected or ought not to have been returned;
- (c) The necessary pronouncement certification and orders under section 36 of the Election Offences Act 1954;
- (d) Such further and other order or relief as the Court deems just; and
- (e) Costs of this Petition.

Dated this 12th day of June 2013

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ROLAND ENGAN
PETITIONER

This Election Petition is presented by Roland Engan the Petitioner and is filed by Messrs Baru Bian Advocates & Solicitors, on behalf of the Petitioner whose address of service is at No.6, 2nd Floor, Lot 5430, Block G, RH Plaza, Jalan Lapangan Terbang, 93350 Kuching, Sarawak