HAKIM BESAR SABAH & SARAWAK
MALAYSIA

CHIEF JUDGE OF SABAH & SARAWAK
MALAYSIA

PEJ.HBSS/SBH/100/1(13)

1 October 2020

Director of Sabah and Sarawak Courts

Sessions Court Judges
Sabah and Sarawak

Deputy Registrars / Senior Assistant Registrars
High Court
Sabah and Sarawak

Senior Assistant Registrar of the Subordinate Courts
Sabah and Sarawak

YBhg. Datuk / Dato' / Dr. / Tuan / Puan,

PRACTICE DIRECTION OF THE CHIEF JUDGE OF SABAH AND SARAWAK NO. 1 YEAR 2020
PROCEDURES FOR HEARING OF CASES BEFORE THE SESSIONS COURT JUDGE CONFERRED WITH JURISDICTION UNDER SUBSECTION 2(2) OF THE LAW REFORM (MARRIAGE AND DIVORCE) ACT 1976 (ACT 164)

Upon the power conferred under subsection 2(2) of the Law Reform (Marriage and Divorce) Act 1976 (Act 164), the Yang Di-Pertuan Agong acting on the advice of the Chief Judge of Sabah and Sarawak by Notification of Conferment of Jurisdiction to Sessions Court Judge (No. 2) 2020 [P.U. (B) 375/2020] (Notification) effective on 1st of July 2020 confers jurisdiction to the Sessions Court Judges named in the notification to deal with any matter under Act 164. In accordance with that, upon consultation with The Right Honourable the Chief Justice and in exercising the power under section 20 of the Court of Judicature Act 1964 (Act 91), I hereby issue this Practice Direction on procedures for hearing of cases before the Sessions Court Judge conferred with jurisdiction under subsection 2(2) of Act 164 (hereinafter referred to as "the Sessions Court Judge conferred with jurisdiction").

Kamar Hakim Besar Sabah & Sarawak, Aras 5, Istana Kehakiman, Presint 3, 62506 Putrajaya, Malaysia
(Chief Judge Sabah & Sarawak Chambers, Level 5, Istana Kehakiman, Precinct 3, 62506 Putrajaya, Malaysia)
Tel: 03-88803639 Fax: 03-88804127 Email: cjss@kehakiman.gov.my
Kamar Hakim Besar, Mahkamah Tinggi, No 1 Jalan Kebajikan, 88300 Kota Kinabalu, Sabah, Malaysia
(Chief Judge's Chambers, High Court, No 1 Jalan Kebajikan, 88300 Kota Kinabalu Sabah, Malaysia)
Tel: 088-286100 Fax: 088-286101 Email: cjss@kehakiman.gov.my

2. APPLICATION

This Direction applies to Sessions Court Judges in Sabah and Sarawak who are conferred with jurisdiction to hear cases under Act 164.

3. DUTY OF THE SESSIONS COURT JUDGE CONFERRED WITH JURISDICTION

A Sessions Court Judge conferred with jurisdiction shall be responsible;

(a) to continue executing the core duties of a Sessions Court Judge; and

(b) to simultaneously hear any matter under Act 164 as directed in writing by The Right Honourable the Chief Judge of Sabah Sarawak from time to time.

4. PROCEDURES OF HEARING BEFORE SESSIONS COURT JUDGES CONFERRED WITH JURISDICTION

4.1 Case Management System (CMS)

4.1.1 The High Court Registry will create the "assign" function of the High Court Judge in the CMS to the Sessions Court Judge conferred with jurisdiction to hear the assigned case. However, the "assign" function will only be activated when necessary.

4.1.2 The name of the Sessions Court Judge conferred with jurisdiction will be inserted in the CMS for the purpose of hearing cases within the jurisdiction of the High Court.

4.2 Types of Cases

4.2.1 The Sessions Court Judge conferred with jurisdiction will only hear the following cases / proceedings;

(a) Joint Divorce Petition under Section 52 of Act 164 (Code 33JP); and

(b) Application for Exemption from referring the case to the Reconciliatory Body under Section 106 of Act 164 (Code 24F).

4.2.2 In the event if;

(a) parties raise a dispute; or

(b) the Sessions Court Judge is satisfied that there is a dubious and disputable issue,

during the hearing of the Joint Divorce Petition (Code 33P) or the Reconciliation Exemption Application (Code 24F), the Sessions Court Judge shall fix a date for case management before the Deputy Registrar who will then fix the hearing before a High Court Judge.

4.3 Registration of Case

4.3.1 Procedure for registration, processing of cause papers and case management under codes 24F and 33JP remain at the High Court and are managed by the High Court Registry.

4.3.2 The High Court Registry will escalate the cause papers that are in order through the Case Management System (CMS) to the Sessions Court Judge conferred with jurisdiction to hear the case.

4.3.3 Where there are more than one Sessions Court Judge who is conferred with jurisdiction, the distribution of cases will be determined by The Right Honourable the Chief Judge of Sabah and Sarawak.

4.4 Fixing of Cases

The Sessions Court Judge conferred with jurisdiction will have two planners in the Case Management System namely;

(a) An existing planner for the cases registered in the Sessions Court; and

(b) A specific / special planner created for the purpose of hearing cases under Act 154.

4.5 Notes of Proceeding

4.5.1 The Sessions Court Judge conferred with jurisdiction is duly responsible for updating and uploading the notes of proceedings into the Case Management System.

4.5.2 The Interpreter on duty is responsible for updating the case results in the Case Management System on the day of the hearing.

4.6 Order and Decree Nisi

4.6.1 The format of the Order and Decree Nisi for a Joint Divorce Petition (Code 33JP) heard before the Sessions Court Judge conferred with jurisdiction is as per **APPENDIX A.**

4.6.2 The format of the Order for the application for Exemption from referring the case to the Reconciliatory Body under Section 106 of Act 164 (Code 24F) heard before the Sessions Court Judge conferred with jurisdiction is as per **APPENDIX B.**

4.6.3 Order and Decree Nisi will be processed by the Deputy Registrar / Senior Assistant Registrar of the High Court based on the notes of proceedings.

4.7 Appeal against the decision of the Sessions Court Judge conferred with Jurisdiction

Any appeal against the decision of a Sessions Court Judge conferred with jurisdiction shall be heard by the Court of Appeal.

4.8 Statistics

4.8.1 Sessions Court Judge conferred with jurisdiction shall be responsible for the statistics of cases heard under Act 164 and the existing statistics in his/her respective Sessions Court.

4.8.2 Cases heard under Act 164 will be disposed of according to the number of cases registered in the High Court. Concurrently, the number of cases heard and disposed of will be recorded in a separate statistic as per **APPENDIX C.**

4.8.3 Each of the Sessions Court Judge conferred with jurisdiction to hear cases under Act 164 will therefore have additional statistics specifically for cases heard under Act 164.

4.9 Proceedings for Hearing

4.9.1 All hearing of cases referred to in paragraphs 4.2.1 (a) and (b) shall be heard as if the hearing is before a High Court Judge.

4.9.2 Counsel and/or parties to the proceedings shall be present at the hearing of the proceeding.

4.9.3 If for any reasonable reasons, counsel or any party in a proceeding is unable to attend the hearing of the case in Court, counsel or party who is unable to attend shall make an application to the Court for the hearing of the case to be conducted online via Zoom or Skype application, whichever is deemed appropriate to the Court and parties. This application should only be made and allowed subject to the consent of counsel or the opposing party.

4.9.4 For hearing of cases in the High Court other than in Kuching and Kota Kinabalu, parties may apply to use the video conferencing facilities to the High Court in Sabah and Sarawak which provides such facilities.

5. EFFECTIVE DATE

This Practice Direction comes into operation on 1 October 2020.

(DATO' ABANG ISKANDAR BIN ABANG HASHIM)
Chief Judge of Sabah and Sarawak

c.c. **The Right Honourable the Chief Justice of Malaysia**
Federal Court of Malaysia
Palace of Justice
PUTRAJAYA

The Right Honourable the President of the Court of Appeal
Federal Court of Malaysia
Palace of Justice
PUTRAJAYA

The Right Honourable the Chief Judge of Malaya
Federal Court of Malaysia
Palace of Justice
PUTRAJAYA

The Honourable Judges / Judicial Commissioners
High Court in Sabah and Sarawak

Chief Registrar
Federal Court of Malaysia
Palace of Justice
PUTRAJAYA

Deputy Chief Registrar
Federal Court of Malaysia
Palace of Justice
PUTRAJAYA

Registrar
High Court of Malaya
Palace of Justice
PUTRAJAYA

Registrar
High Court of Sabah and Sarawak
Kota Kinabalu Courts Complex
SABAH

Registrar
Subordinate Courts of Malaya
Palace of Justice
PUTRAJAYA

Registrar
Subordinate Courts of Sabah and Sarawak
Kota Kinabalu Courts Complex
Kota Kinabalu
SABAH

President
Malaysian Bar
KUALA LUMPUR

President
Sabah Law society
Kota Kinabalu
SABAH

President
Advocates Association of Sarawak (Central Committee)
Miri
SARAWAK

Librarian
Office of the Chief Registrar
Federal Court Malaysia
Palace of Justice
PUTRAJAYA

APPENDIX A

IN THE HIGH COURT IN SABAH AND SARAWAK

AT.....

DIVORCE PETITION NO: .....

In the matter of Joint Petition for the Dissolution of Marriage Under Section 52 of the Law Reform (Marriage and Divorce) Act 1976

AND

XY
(IC NO.:.....) **.....HUSBAND PETITIONER**

BETWEEN

XX
(IC NO:.....) **.....WIFE PETITIONER**

BEFORE THE HONOURABLE SESSIONS COURT JUDGE

(Name of Sessions Court Judge)

The Sessions Court Judge conferred with the jurisdiction by virtue of Subsection 2 (2) of Law Reform (Marriage and Divorce) 1976 [Act 164]

ON XXX **IN OPEN COURT**

ORDER

WHEREAS by a Joint Petition for Dissolution of Marriage .....AND UPON READING ..... all filed herein AND UPON HEARING ..... DO ORDER / PRONOUNCED AND DECREED THAT.....

Dated this day.....

(Name of Deputy Registrar/Senior Assistant Registrar)

Seal

.....
Deputy Registrar/Senior Assistant Registrar
High Court Sabah and Sarawak

IN THE HIGH COURT IN SABAH AND SARAWAK

AT.....

DIVORCE PETITION NO: .....

In the matter of Joint Petition for the Dissolution of Marriage under Section 52 of the Law Reform (Marriage and Divorce) Act 1976

AND

XY
(IC NO.:.....) **.....HUSBAND PETITIONER**

BETWEEN

XX
(IC NO:.....) **.....WIFE PETITIONER**

BEFORE THE HONOURABLE SESSIONS COURT JUDGE

(Name of Sessions Court Judge)

The Sessions Court Judge conferred with the jurisdiction by virtue of Subsection 2 (2) of Law Reform (Marriage and Divorce) 1976 [Act 164]

ON XXXX **IN OPEN COURT**

DECREE NISI

THE ABOVE PETITION coming up for hearing this day and the Sessions Court Judge **HAVING READ** the Joint Petition ..... all filed herein **AND HAVING HEARD** .....

IT IS PRONOUNCED AND DECREED THAT the marriage solemnized on the.....at.....be dissolved in accordance to Section 52 of The Law Reform (Marriage and Divorce) Act 1976 (Act 164) unless sufficient cause be shown to the Court within (3) months from the making thereof as to why this Decree should not be made absolute.

Dated this day .....

(Name of Deputy Registrar/Senior Assistant Registrar)

Seal

.....
Deputy Registrar/Senior Assistant Registrar
High Court Sabah and Sarawak

APPENDIX B

IN THE HIGH COURT IN SABAH AND SARAWAK

AT.....

ORIGINATING SUMMONS NO: .....

In the matter of section 106 (1) (..), (..), (..) of the Law Reform (Marriage and Divorce) Act 1976

XY
(IC NO.:.....) **...APPLICANT**

ORIGINATING SUMMONS/ EX-PARTE ORIGINATING SUMMONS

LET ALL PARTIES CONCERNED attend before the Judge in Chambers on.....
on the hearing of an application by the Applicant herein for an Order:-

The grounds of this Application are further set out in the Affidavit in Support affirmed by.....on.....

Dated this day.....

Seal **(Name of Deputy Registrar/Senior Assistant Registrar)**

.....
Deputy Registrar/Senior Assistant Registrar
High Court Sabah and Sarawak

(* Alteration to be made in this form in accordance to the nature of the Application whether it is an ex-parte or inter partes: For inter partes, it involves Plaintiff and Defendant. If it is an ex-parte, it refers to an Applicant)

IN THE HIGH COURT IN SABAH AND SARAWAK

AT.....

ORIGINATING SUMMONS NO: .....

In the matter of section 106 (1) (..), (..), (..) of the Law Reform (Marriage and Divorce) Act 1976

XY
(IC NO.:.....) **...APPLICANT**

BEFORE THE HONOURABLE SESSIONS COURT JUDGE

(Name of Sessions Court Judge)

The Sessions Court Judge conferred with the jurisdiction by virtue of Subsection 2 (2) of Law Reform (Marriage and Divorce) 1976 [Act 164]

ON XXXX **IN CHAMBERS**

ORDER

UPON THE APPLICATION of the abovenamed Applicant **AND UPON READING** * ORIGINATING SUMMONS / EX-PARTE ORIGINATING SUMMONS dated.....all filed herein **AND UPON HEARING**..... **IN THE ABSENCE OF THE DEFENDANT IT IS HEREBY ORDERED** that.....

AND IT IS FURTHER ORDERED THAT .....

Dated this day.....

Seal **(Name of Deputy Registrar/Senior Assistant Registrar)**

.....
Deputy Registrar/Senior Assistant Registrar

(*Alteration to be made in this form in accordance to the nature of the Application whether it is an ex-parte or inter parties)

APPENDIX C

STATISTICS OF THE SESSIONS COURT JUDGE CONFERRED WITH THE JURISDICTION BY VIRTUE OF SUBSECTION 2 (2) OF LAW REFORM (MARRIAGE AND DIVORCE) ACT 1976 [ACT 164]

NAME OF THE JUDGE:

MONTH:

CODES	FIXING OF CASES		OUTCOME		
	NEW CASES	CASES BROUGHT FORWARD	DISPOSED	TRANSFERRED BACK TO THE HIGH COURT	PENDING CASES
33JP					
24F					
TOTAL					