

## **NATIVE COURT OF APPEAL**

### **General Information**

Constituted by the power vested in the Yang di-Pertua Negeri, the Native Court of Appeal is the apex of the three-tier system of courts governing matters within the ambit of Item 13 of List IIA (Supplement to State List for Sabah and Sarawak) in the 9<sup>th</sup> Schedule to the Federal Constitution.

The Native Court of Appeal serves as the last avenue of appeal for any decision or order made by the Native Courts or District Native Courts. It shall be presided over by a Judge of the High Court of Sabah and Sarawak as President, and two (2) other members who shall be District Chiefs or Native Chiefs to be appointed by the State Minister responsible for the administration of native affairs. Such amalgamation of judicial quorum at the highest court in the Native Courts hierarchy was first introduced into the system in 1958 as amendment to the repealed Native Court Ordinance 1953. Its rationale is to provide a platform for a High Court Judge to exercise its inherent supervisory jurisdiction over the Native Courts and to allow direct participation of a High Court Judge in the administration of justice under the native law and custom.

By having a High Court Judge sitting at the helm of the highest court in the Native Court judicial hierarchy, it would not only enhance the dignity and respect of the Native Courts but would also instill more public confidence in the system. With the judicial knowledge and expertise of a High Court Judge at its disposal, the Native Court judicial system would be greatly enriched and progressive, complimenting the political, economic and social evolution of the native communities in Sabah.

## **Jurisdiction of Native Court of Appeal**

- The Native Court of Appeal, being part of the Native Courts judicial system, shall have jurisdiction over matters involving breach of native law or custom relating to:
  - (a) Betrothal, marriage, divorce, nullity of marriage and judicial separation;
  - (b) Adoption, guardianship or custody of infants, maintenance of dependants and legitimacy; and
  - (c) Gifts or succession testate or intestate
  
- As one of the appellate courts, the Native Court of Appeal is also endowed with the power to:
  - (a) Dismiss an appeal;
  - (b) Set aside or vary an order;
  - (c) Reduce or increase any sentence of punishment or fine or order for compensation; or
  - (d) Order a rehearing by the same or a differently constituted Native Court
  - (e) Exercise the powers and privileges of a Native Court

## **How to file an appeal before the Native Court of Appeal?**

1. A notice of appeal as provided in Form 12 of the Native Courts (Practice and Procedure) Rules 1995 must be filed within 60 days from the date of the order appealed against.
2. The completed Notice of Appeal must be filed in the District Native Court or the Registry of the Native Court of Appeal in Kota Kinabalu Court Complex.
3. Once the Notice of Appeal is filed, a case number will be provided by the Registry of the Native Court of Appeal.
4. 8 copies of the Record of Appeal to be prepared by the Appellant within 4 weeks from date of registration of Notice of Appeal. The Record of Appeal to be filed at the Registry of the Native Court of Appeal in Kota Kinabalu Court Complex.
5. The filing of all of these documents are free of charge.

## **Record of Appeal**

- The Record of Appeal must contain the following documents in the following order:
  1. Index / Table of Content
  2. Memorandum of Appeal
  3. Notice of Appeal
  4. Notes of Proceedings in chronological order
  5. Order / Judgment of the Native Court and District Native Court
  6. Grounds of Decision of the Native Court and District Native Court
  7. Exhibits
- The front page of the Record of Appeal must contain the Native Court of Appeal case number and the names of the Appellant and Respondent.
- Only 100 pages for each volume of Record of Appeal.