

77 Arthur Circle,
Forrest, A.C.T. 2603,
23rd June, 1975.

Mr Gavin Hewitt,
British High Commission,
Commonwealth Avenue,
YARRALUMLA, A.C.T. 2600.

Dear Mr Hewitt,

As you are in charge of the Australian end of the three current Banaban actions and petitions I am taking the liberty of forwarding to you direct the following correspondence relating to the first action brought against the British Phosphate Commissioners and Her Majesty's Attorney-General (for the Crown):-

- (1) a memorandum T&M71/948/NDI of the 5th June from the Assistant Treasury Solicitor to myself;
- (2) a copy of the transcript of Mr Rotan Tito's examination-in-chief and cross-examination referred to therein (but not the ancillary documentation);
- (3) a copy of my letter in reply to (1), dated the 14th June, together with my statement on Mr Rotan's evidence enclosed with it; and
- (4) the Assistant Treasury Solicitor's telegram to me dated the 20th June.

Since I have no ready means of copying these documents myself, perhaps you would be so kind as to peruse any of them which you may wish to and return them to me for my files. There is, of course, no objection, so far as I am concerned, to your having photocopies made of any or all of the correspondence for your own records.

2. The only matter of urgent concern appears to be Mr N.D. Ing's request that I should fly to England immediately to give evidence on behalf of the Crown since, as I mentioned to you some weeks ago, the present state of my health precludes this and a medical certificate to that effect can be procured if desired. Unfortunately, due to the strain induced by service in the remoter Pacific Islands under conditions which the Colonial Office medical advisers stated could be endured by only some 5% of applicants for Colonial Administrative Service positions, I have developed a marked nervous condition of the

pylorus which caused my premature retirement from the Australian National University and has necessitated my living as a virtual recluse ever since. When this condition becomes acute, at times of stress, I am physically prostrated.

3. I am indeed sorry if Mr Ing should have interpreted my willingness to give evidence when there was ample time available to proceed to England in a reasonably leisurely progression, and to acclimitize myself to a new environment before being required to appear in Court, with the physical ability to do so at a moment's notice. Perhaps this should have been made clear in my letter but it never entered my head that the time for producing new evidence and new documents relating to a case now so well advanced was not long since over and that my statement on Mr Rotan's evidence was not solely required for the assistance of Mr le Quesne in conducting the examination of witnesses already selected by the Crown. Indeed, I am not clear why I should have been asked for my written comments at all if it was intended that I should give oral evidence.

4. You are already aware why, as a loyal servant of the Crown, albeit now retired on superannuation, I considered that it would be unethical and inappropriate for me to give evidence in the Banaban actions except at the request of the British Government. Banaban importunities, however, while worrying, had nothing like the devastating effect on my health induced by my being made aware, through friends and correspondents, that the British Government and British Phosphate Commissioners were busily engaged over a period of years in gathering documentary and oral evidence and arranging for the procurement of witnesses in Australia, Fiji, the Gilbert and Ellice Islands Colony, and no doubt elsewhere, while deliberately, and on all occasions, ignoring me, although they must have well known that for many of the issues I could be the only person still alive with an accurate and detailed knowledge of what actually transpired.

5. It was, therefore, in a state akin to incredulity that I finally summoned up the courage to approach you to ascertain whether, in fact, I was considered non persona grata by the Government to which I had given a lifetime of service. The euphoria induced by your personal kindness and consideration to me was reassuring and very much appreciated, but it was gradually dispelled when no reply appeared to be forthcoming from the Foreign Office; and the deterioration in my health was finally exacerbated when you were ultimately informed, in effect, that while the British Government could not prevent me from giving evidence against the Crown I was categorically not wanted to give evidence for the Crown.

6. By the time, therefore, that you were able to convey the views of the British Government to me I had to tell you that, in any case, my medical adviser would no longer consider my flying to England on behalf of the Banabans, even had I been willing to do so. I am afraid that the same impediment precludes, a fortiori, my being rushed to London, at the eleventh hour, without time to procure clothes, recover after my arrival, consult my London solicitors, obtain medical advice and assistance, and generally ensure that I am in a fit state to give evidence and survive the ordeal. In brief, I am no longer young, and unable to sustain any severe physical or psychological strain without adequate notice being given, and arrangements made, to enable my health to be safeguarded in so far as it is possible to do so.

7. It should be noted, in this connexion, that nowhere in my letter to Mr Ing did I contemplate the possibility of my proceeding to England at this stage but confined my remarks to pointing out, what I have felt very deeply for a long time, that through the British authorities' refusal to avail themselves of my expert knowledge of what actually transpired at the time they had voluntarily handicapped themselves in correcting mistakes being made in the evidence adduced by other witnesses and in presenting a true picture of events for the benefit of the Court.

8. I should perhaps emphasize, in concluding, that nothing in this letter should be taken as implying an unwillingness, at all times, to give every assistance within my power to the Treasury Solicitor by stating in detail my recollections of events and issues; by commenting on the evidence given by others on matters within my cognizance; by advising on relevant documentation; and, if considered desirable, by giving sworn evidence by commission.

9. I should be grateful if Mr Ing could be informed by telegram, with an expression of my regret, of my inability to proceed to London, together with the reason, and if a copy of this explanatory letter could be forwarded to him in due course.

Yours sincerely,



H.E. Maude.