

## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

650  
Service Appeal No. 650/2023

Naeem Badshah,  
Ex-FC Constable No.790,  
Police Force Kohat.....Appellant.

Versus

The Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar and others.....Respondents.

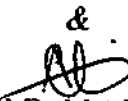
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Appellant

Through

As L<sup>ts</sup>  
Ashraf Ali Khattak  
Advocate,  
Supreme Court of Pakistan

&  
  
Ali Bakht Mughal  
Advocate,  
High Court, Peshawar

Dated: 23 /05/2024

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. <sup>650</sup> ~~660~~/2023

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 12933

Dated 23-05-2024

Naeem Badshah,  
Ex-FC Constable No.790,  
Police Force Kohat.....

Appellant.

Versus

The Inspector General of Police,

Khyber Pakhtunkhwa, Peshawar and others..... Respondents.

**REJOINDER ON BEHALF OF THE APPELLANT IN RESPONSE  
TO THE PARAWISE REPLY SUBMITTED BY RESPONDENTS.**

Respectfully Sheweth,

**REJOINDER TO PRELIMINARY OBJECTIONS:**

That the preliminary objections raised by the answering respondents are erroneous in nature and spirits rather self-created and flimsy. The answering respondents have failed to give legal and factual support to their contentions submitted in the shape of preliminary objections. No legal reasons have been submitted by the answering respondents as to why the appellant has no cause of action and locus standi? Why the appellant is estopped by his own conduct? Which necessary party have left and not arrayed as party? Why the appeal is bad in law? How the appellant has not approached this Hon'ble Tribunal with clean hands? In absence of legal support; proper rejoinder could not be filed and submitted therefore, preliminary objections raised by the answering respondents are liable to be struck down.

**REJOINDER TO FACTS:-**

1. That reply to para No.1 of the appeal is incorrect, hence denied. The alleged criminal FIR attached by the answering respondents was not part and parcel of the charge sheet and statement of allegations. Appellant has never been confronted with such copies of FIR and not orally. The attachment of these

FIRs shows that the answering respondents have attached the same with malafide attention in order to save his own skin from the inefficient and irresponsible conduct applied by them during the course of inquiry proceedings as no evidence has been collected by the prosecution during the course of inquiry proceedings which may support the prosecution stance. In case FIR No.309, where appellant has already been discharged u/s 494 Cr.PC and whereas FIR No.558 dated 30-12-2013 u/s 411, 420, 468, 471 PPC PS: Karak has been concerned, there is no evidence at all which may link the appellant with the alleged offence. The name of the appellant is only available in case diary. The name of the appellant has neither arrayed on the panel of accused in the said FIR nor was he tried in the said criminal proceedings.

2. That reply to para No.2 of the appeal by the answering respondents is incorrect, hence denied. Appellant has almost 24 years' service at his credit and has never been penalized except the impugned one.
3. That reply to para No.3 of the appeal by the answering respondents is incorrect, hence denied. Appellant has undergone surgery of his left eye and is still feels pain in his Orbital Mass. This Hon'ble Tribunal may also judge condition of his its left eye. Copy of documents is attached as **Annex/Rj-1**.
4. That no reply has been submitted by the answering respondents in response to para No.4 therefore, the same has considered as admitted.
5. That reply to para No.5 of the appeal by the answering respondents is incorrect, hence denied. The entire departmental proceedings have been conducted in the absence and at the back of appellant which is evident from the statement recorded by the inquiry officer. Appellant has never been provided opportunity to scrutinize the statement of alleged witnesses under the scrutiny of cross examination. In case, the opportunity of cross examination was provided to the appellant particularly against HC. Aman Ullah, the whole truth would be on surface. The rivalry in ulterior motive of HC Aman Ullah in his attitude towards the appellant, right from the initial stage that occurred within the premises of the Court of Learned ADJ, Takht E Nasrati where appellant was performing his duties at the main gate of the Court premises where appellant restrained HC Aman Ullah from proceeding to the Court of

Learned Addl. Session Judge, Takht E Nastrati while having pistol / arms in his possession. This made HC Aman Ullah annoyed and then he proceeded against the appellant on many other occasions which could easily establish the target objection of HC Aman Ullah

6. That reply to para No.6 of the appeal by the answering respondents is incorrect, hence denied. The detailed reply has already been submitted in the preceding para.
7. That reply to para No.7 of the appeal by the answering respondents is also incorrect, hence denied. Appellant has already been acquitted from the impugned charge sheet of the instant disciplinary action. The charges leveled against the appellant in the criminal proceedings as well as under the disciplinary proceedings are the same. Where departmental proceedings were initiated only on the basis of criminal charge which was not subsequently proved in the competent Court of law and resulted in acquittal. The penal order could not be sustained. Wisdom may be derived from the Judgment reported as 1998 SCMR 1993. The alleged fake currency notes has not been recovered from the personal possession of the accused appellant which fact is evident from the Judgment of the criminal Court in the instant case. Copy of Judgment of the Hon`ble Criminal Court is hereby attached as **Annex/Rj-2**.
8. That replies to paras No.8 to 14 of the appeal by the answering respondents are incorrect, hence denied. So far the previous departmental proceeding on the instant appellant is concerned, the same has been filed by the answering respondents by itself and exonerated the appellant from the alleged charges.

**REJOINDER TO GROUNDS:-**

That reply to Grounds A to O by the answering respondents are incorrect and mere repetition of the facts therefore no need of further elucidation. Appellant relies on the grounds already been incorporated in the main service appeal.

**Prayer:**

It is, therefore, most humbly prayed that the reply of answering respondents may kindly be rejected and the appeal of the appellant may graciously be accepted as prayed for, with all back benefits.

**Appellant****Through**

*Ashtu*  
**Ashraf Ali Khattak**  
Advocate,  
*Supreme Court of Pakistan*

&amp;

*AB*  
**Ali Bakht Mughal**  
Advocate,  
*High Court, Peshawar*

**Dated: \_\_\_\_/05/2024**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

650  
Service Appeal No. 650/2023


Naeem Badshah,  
Ex-FC Constable No.790,  
Police Force Kohat.....Appellant.

**Versus**

The Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar and others.....Respondents.

**AFFIDAVIT**

I, Naeem Badshah, Ex-FC Constable No.790, Police Force Kohat do hereby solemnly affirm and declare on oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from the notice of this Hon'ble Tribunal.



**DEPONENT**

CNIC: 14203-3921476-5

Humayun  
Oath Commissioner  
Edt. No. 3370-75

23/5/24

RJ/1 ⑥

14167013



LADY READING HOSPITAL  
PESHAWAR

Date: 5/12/2022

REFERRAL LETTER  
SEHAT SAHULAT

Name: Naeem Badshah CNIC: MR: 4746810

Presenting Complaints / History:		Known Case of:	
① Orbital Mass		Diabetes	
		HID/ Hypertension	
		Hepatitis B/ C	
		Asthma / COPD	

Vitals:			
Pulse	Respiration	Temperature	Blood Pressure
	N A	D	

Investigation:			
Blood CP	X-Ray	Others	
BSR	ECG	CT Scan	
✓ Viral Marker B/C	LFTs		
USG	RFTs		

Clinical Examination  
① Orbital Mass

Provisional Diagnosis:  
① Orbital Mass

OPD	Surgical Admission	Medical Admission	Antenatal/Post Natal	Follow Up
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Procedure / Treatment:  
① Orbitotomy

Expected Length of Stay 02 Days

Dr. Muhammad Idris  
Assistant Professor  
Lady Reading Hospital MTL,  
Peshawar PMDC#11874-N  
Attending Physician Name/Sign & Stamp

Referred To: Naeem Badshah Reason of Referral: 0345-809426 Muhammad Faizal Health Facilitation Officer

ATTACHED



LADY READING HOSPITAL  
PESHAWAR

7

14167013

Date: 5/12/22

REFERRAL LETTER  
SEHAT SAHULAT

Name: Naqem Badshah CNIC: \_\_\_\_\_ MR: 4746810

Presenting Complains / History:		Known Case of:	
<u>Ⓛ Orbital Mass</u>		Diabetes	<input type="checkbox"/>
		HID/ Hypertension	<input type="checkbox"/>
		Hepatitis B/ C	<input type="checkbox"/>
		Asthma / COPD	<input type="checkbox"/>

Vitals:			
Pulse	Respiration	Temperature	Blood Pressure
	<u>NA</u>	<u>D</u>	

Investigation:			
Blood CP	X-Ray	Others	
BSR	EKG		
<input checked="" type="checkbox"/> Viral Marker B/C	LFTs	<u>CT Scan</u>	
USG	RFTs		

Clinical Examination  
Ⓛ Orbital Mass

Provisional Diagnosis:  
Ⓛ Orbital Mass

OPD	Surgical Admission	Medical Admission	Antenatal/Post Natal	Follow Up

Procedure / Treatment: Ⓛ Orbitotomy

Expected Length of Stay 02 Days

**Dr. Muhammad Idris**  
Assistant Professor  
Lady Reading Hospital MTI,  
Peshawar PMDC#11874-N  
*[Signature]*  
Attending Physician Name/Sign & Stamp

Referred To: Naqem Badshah Reason of Referral: 0345-8094265  
**Muhammad Faizal**  
Health Facilitation Officer

**ATTENDED**



# Lady Reading Hospital, MTI Peshawar

Lady Reading Hospital, MTI Peshawar Phone: 091-9211430, Fax: -  
Email: info@lrh.edu.pk, Website: www.lrh.edu.pk

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## Department of Radiology

VIEW: 02-Jan-2023 14:35:03

### CT Scan Report

Page 1 of 1

MRNO : K02-00004746810

Dept Ref# : 22-0378519

Name : Naeem Badshah

Age/Sex : 34 Year(s)/Male

Phone : 92 091 00000000

Address: kpk  
PESHAWAR - PAKISTAN

CNIC# : 14203-3921476-5

Order By : Nisar Ahmad

Referring Physician :

In-house Consultant :

Destination(s) of Report :

Request Date : 28-Nov-2022 04:55:17 PM

Perform Date : 28-Nov-2022 05:40:28 PM

Report Date : 29-Nov-2022 09:32:20 AM

#### CPT : CT BRAIN

**REPORT :** Cerebral parenchyma: [Normal.]  
Ventricular system: [Normal for age.]  
Midline shift: [None.]  
Cerebellum: [Normal.]  
Brainstem [Normal.]  
Paranasal sinuses and mastoid air cells: [Clear.]  
Skull base: [Normal.]

**CONCLUSION :** Soft tissue density preseptal lesion (22mm) most likely forniceal mass  
Rest of the orbit appears unremarkable

DR NADEEM ULLAH

Electronically verified report, no signature(s) required

ATTACHED

# Lady Reading Hospital, MTI Peshawar

Lady Reading Hospital, MTI Peshawar Phone: 091-9211430, Fax: --  
Email: info@lrh.edu.pk, Website: www.lrh.edu.pk

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## Department of Radiology

VIEW: 02-Jan-2023 14:35:03

### CT Scan Report

Page 1 of 1

MRNO : K02-00004746810

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Destination(s) of Report :

Request Date : 28-Nov-2022 04:55:17 PM

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Brainstem [Normal.]  
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Skull base: [Normal.]

**CONCLUSION :** Soft tissue density preseptal lesion (22mm) most likely forniceal mass  
Rest of the orbit appears unremarkable

DR NADEEM ULLAH

Electronically verified report, no signature(s) required.

**ATTACHED**

17/7/21 36/7

Rj/a (10)

(14)

IN THE COURT OF ROZINA REHMAN,  
SESSIONS JUDGE, KARAK

Sessions Case No. 36/7 of 2021.

The State... Vs.... Naeem Badshah.

ORDER  
09.5.2024

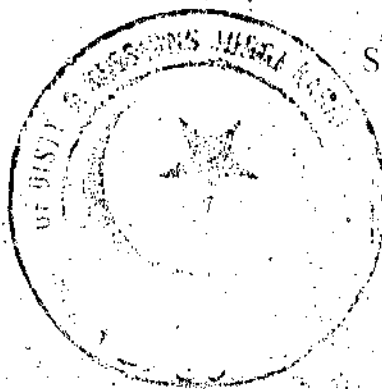
Mr. Taj Muhammad DPP for the State and accused facing trial Naeem Badshah on bail present. Arguments have already been heard and gone through the evidence on record.

Vide my separate judgment of today, consisting upon eight (08) pages, placed on file, accused Naeem Badshah s/o Hazoor Shah r/o Sarki Lawaghar, Tehsil Takht-e-Nasrati District Karak is acquitted of the charge/offence. He is on bail, his bail bonds stand cancelled and his sureties are absolved of their liabilities towards bail bonds. The case property be destroyed but after the expiry of period of appeal/revision.

File be consigned to Record room.

Announced.  
09.5.2024.

Rozina Rehman,  
Sessions Judge, Karak



*(Handwritten signature)*

EXAMINED  
Examined Copying  
Branch Karak

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IN THE COURT OF ROZINA REHMAN,  
SESSIONS JUDGE, KARAK

Sessions Case No.36/7 of 2021.

Date of Institution...17.07.2021.

Date of Decision...09.05.2024.

The State.

VERSUS

Naeem Badshah son of Hazoor  
Shah r/o Sarki Lawaghar, Tehsil  
Takht-e-Nasrati District Karak.

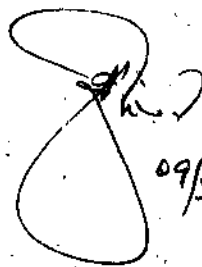
*(Accused facing trial)*

JUDGMENT

09.5.2024

The accused Naeem Badshah faced trial for having recovered five packets containing a total of Rs.5,28,500/- counterfeit currency from his possession in the instant case.

2. The prosecution case is that Asif Sharif SHO P.S Karak alongwith other police nafri was present on the barricade duty at Toll Plaza situated at main highway when at 13:50 hours one flying coach coming from Kohat side was stopped for the purpose of checking wherefrom a person seated in the 2<sup>nd</sup> seat was found suspicious who was holding one blue plastic envelope in his lap, was deboarded and the plastic bag was taken into possession which on checking led to the recovery of five packets containing 1000/1000 currency notes per packet while one packet of Rs.500/- of counterfeit currency notes.

  
09/5/24

Rozina Rehman  
Sessions Judge, Karak

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Copied  
Branch Karak

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-2- 12

The person disclosed his name to be Na'eem Badshah s/o Hazoor Shah r/o Sarki Lawaghar who was accordingly arrested and the above-mentioned counterfeit currency notes were taken into possession through recovery memo. To this effect murasila (Ex.PA/1) was drafted and was sent to police station through constable Muhammad Ilyas No.5080 for registration of case and present case vide F.I.R No. 186 dated 04.5.2021 was registered under section 489-C P.P.C at P.S Karak.

3. The complete challan, after usual investigation, was submitted against accused who was delivered copies in compliance with provisions of section 265-C Cr.P.C; was formally charged for the offence under section 489-C P.P.C but he pleaded not guilty to the charge and wanted to be tried.

4. The prosecution, to prove its case against the accused facing trial produced following eight (08) witnesses. The gist of prosecution evidence is as under:-

- a. PW-1 is the statement of Nasir Iqbal Moharrir who incorporated the contents of murasila into F.I.R Ex.PA. He also sent parcel of instant case to expert of State Bank of Pakistan for report vide route certificate Ex.PW-1/1.

  
Rozina Rehman  
Sessions Judge, Karak

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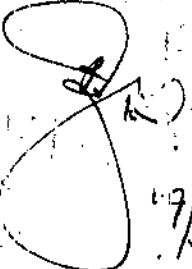
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- b. PW-2 is the statement of Kashif-ur-Rehman No.542 who has taken the parcel of the instant case to Expert, State Bank of Pakistan.
- c. PW-3 is the statement of Asif Sharif DSP who is the complainant of instant case and reiterated the story as narrated in the murasila report Ex.PA/1.
- d. PW-4 is the statement of Aman Ullah HC who is the marginal witness to the recovery memo Ex.PC.
- e. PW-5 is the statement of Farman Ullah SI who has submitted complete challan against the accused facing trial in the instant case.
- f. PW-6 is the statement of Umair Afzal, Assistant Currency Officer State Bank of Pakistan (Peshawar) who has submitted report Ex.PW-6/1.
- g. PW-7 is the statement of constable Muhammad Ilyas No.5080 who took the murasila to P.S for registration of F.I.R.
- h. PW-8 is the statement of Rasheed Ullah SHO who investigated the instant case.

5. The prosecution thereafter declared its evidence as closed and statement of accused was recorded under section 342 Cr.P.C but he professed innocence and claimed false implication.

6. Mr. Taj Muhammad D.P.P for the state argued that accused facing trial was apprehended by the local police being in possession of huge quantity of



Rozina Rehman  
Sessions Judge, Karak

9/5/24

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counterfeit currency notes which have been verified to be forged through report of Expert, State Bank of Pakistan; that the police officials have no ill will to charge the accused in the present case; that prosecution proved its case against the accused beyond reasonable doubts.

7. Mr. Akhtar Nawaz Khan Advocate for accused facing trial on the other hand argued that accused facing trial was involved in the case falsely; that present case was registered against accused facing trial just to show efficiency to the high-ups of police; that there was no independent witness of the recovery; that all witnesses produced against accused facing trial were interested in the prosecution at the instance of the recovery officer; that there was no past conviction of accused facing trial in such like cases; that prosecution miserably failed to bring home charge against the accused facing trial beyond reasonable doubts.

8. I have heard the arguments of learned D.P.P for the State, learned defence counsel and gone through the evidence on record.

9. Perusal of record reveals that accused facing trial has been booked in the instant case for having recovered from his possession a huge number of

  
09/5/24

Rozina Rehman  
Sessions Judge, Karak

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Branche KARAK

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counterfeit currency notes at the time when the accused facing trial was travelling in flying coach coming from Kohat side which was stopped at barricade erected at Toll Plaza situated at main highway District Karak but no private person/passenger/driver/cleaner was associated with recovery proceeding. What to say of non-association of any private person with the recovery proceedings, the seizing officer (PW-3) in his cross examination even stated that he has not mentioned the registration number of the flying coach nor has he recorded the names of the driver of the flying coach. This fact of non-association of private person with the recovery proceedings has further been affirmed by investigation officer (PW-8) who stated in his cross examination that he has not recorded the statement of driver/cleaner and passengers.

10. The most crucial point in the instant case is that it has been registered on the report of Asif Sharif SHO (PW-3) who is the seizing officer, disclosing in his examination-in-chief that he has drafted murasila Ex.PA/1 on the spot which was sent to P.S for registration of F.I.R through Muhammad Ilyas No.5080. The said murasila report of PW-3 Asif Sharif SHO was transmitted to Moharrir Nasir Iqbal

*[Handwritten Signature]*  
09/5/24

Rozina Reiman  
Sessions Judge, Karak

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(PW-1) stating in his examination-in-chief that he has correctly incorporated the contents of murasila into F.I.R (Ex.PA), however, this witness (PW-1) in the footnotes of his cross examination lucidly held it correct that the murasila report is not in the handwriting of SHO. Furthermore, the seizing officer (PW-3) in his cross examination has admitted that his daily diaries in respect of his departure and arrival from and to the P.S are not available on judicial file, therefore, together with the deposition of PW-1 that the murasila is not in the handwriting of SHO i.e PW-3 coupled with the fact that daily diaries in respect of departure and arrival of seizing officer are also not available on file, making the presence of complainant/SHO (PW-3) on the spot highly doubtful rather it be derived that whole of the proceedings have allegedly been carried out somewhere else rather on the spot, showing no nexus of the accused facing trial with the alleged recovered counterfeit notes.

11. Apart from the above, factual position on the record there is certain legal obligation that has to be taken into consideration in terms of section 489-C P.P.C which does not speak for an offence if a person is mere possessing counterfeit currency notes or that a person is possessing such forged notes without

  
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Rozina Rehman  
Sessions Judge, Karak

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knowledge rather the spirit of the section suggest that essential ingredients for the prosecution are to prove the notes from the possession of accused to be forged, counterfeited and that accused had the intention to use them as genuine or that he might use them as genuine, therefore, the basic question in the instant case emerges that there is no evidence on case file which could have shown the intention of the accused facing trial for using the allegedly recovered counterfeit currency notes as genuine nor the prosecution has succeeded to prove on record that accused facing trial was previously connected with such activities/business of counterfeit currency notes, thus, mere possession/recovery of counterfeit currency notes from the accused facing trial does not make the accused liable to be proceeded under the law once the important ingredient of his intention to use the forged notes as genuine, is missing. In this regard, reliance is placed on 2010 P.Cr.LJ 198 & 1988 P.Cr.LJ 1553.

Therefore, while the prosecution had to prove that accused was in the knowledge that currency note was forged and that it might be used as genuine but the prosecution did not prove the possession of fake currency note in question by the accused facing trial to be used as genuine. The prosecution has not been

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 29/5/24

**Rozina Rehman**  
 Sessions Judge, Karak

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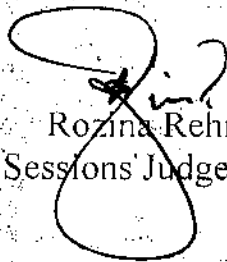
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succeeded to bear out its case against accused facing trial beyond reasonable doubt.

Consequently, accused Naeem Badshah s/o Hazoor Shah r/o Sarki Lawaghar, Tehsil Takht-e-Nasrati District Karak is acquitted of the charge/offence. He is on bail, his bail bonds stand cancelled and his sureties are absolved of their liabilities towards bail bonds. The case property be destroyed but after the expiry of period of appeal/revision.

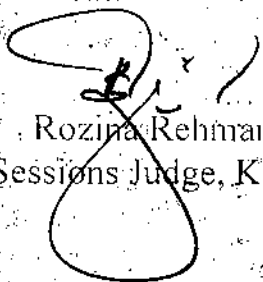
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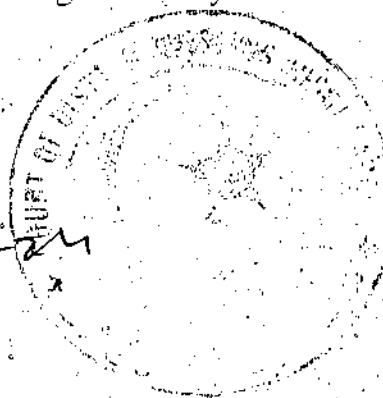
Announced.  
09.5.2024

  
Rozina Rehman,  
Sessions Judge, Karak

CERTIFICATE.

Certified that this judgment consists of eight (08) pages. Each page has been signed by me after making necessary corrections therein.

  
Rozina Rehman,  
Sessions Judge, Karak



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Certified To be true Copy  
Examiner Copying Branch  
Karak  
13-5-24

CC No. 2232  
Date of Presentation of Application 10-5-24  
Number of Pages 10  
C. 1  
L. 1  
D. 13-5-24  
B. 13-5-24  
U. 1

