

**Section 257 (1) of Code of Criminal Procedure says if the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice**

**The court does not need to summon all the witnesses the accused has nominated**

**Final statements of both sides for amendments regarding dismissal of three witnesses nominated by plaintiffs heard**

NAY PYI TAW, 5 June—Yangon North District Court this morning presided over criminal cases No. 47/2009, No. 48/2009 and No. 49/2009 against US citizen Mr. John William Yettaw, Daw Aung San Suu Kyi, Daw Khin Khin Win and Ma Win Ma Ma.

As the lawyers of the defendants submitted the application for amendment related to the decree on criminal case No. 47/2009 to the Yangon Division Court, the court could not hear the final statement and hearing of the cases were adjourned until 12 June.

In the criminal case No. 47/2009 of Yangon North District Court against US citizen Mr. John William Yettaw, Daw Aung San Suu Kyi, Daw Khin Khin Win and Ma Win Ma Ma, defendants Daw Aung San Suu Kyi, Daw Khin Khin Win and Ma Win Ma Ma submitted the application for amendment to Yangon Division Court on 2 June through their lawyers U Kyi Win, U Nyan Win, U Hla Myo Myint and Daw Khin Htay Kywe to amend the decree on refusing their three witnesses ruled by the Yangon North District Court. It was the criminal amendment case No. 437/2009 of the Yangon Division Court.

After hearing the statement of Lawyer U Nyan Win, Yangon Division Court accepted the application for amendments to the decree and the hearing was adjourned until 5 June.

The final arguments of both sides were heard at 3 pm today. In his statement, Lawyer U Nyan Win said Daw Aung San Suu Kyi, Daw Khin Khin Win and Daw Win Ma Ma presented four defence witnesses. The four defence witnesses are U Tin Oo, U Win Tin, U Kyi Win and Daw Khin Moh Moh. The court stated that it would examine U Kyi Win, out of four proposed witnesses, and examined U Kyi Win on 28 May, he said. He assumed that three other witnesses were rejected as the court did not summon them to the court, he added. As they assumed that it was unjust and against the law, the applicants pleaded for amendments to the decree. He continued to say that it was against the law that in the daily records of the court, only U Kyi Win would be summoned to the court on 27 May and there is no decree related to other defence witnesses. It was wrong for the court that it did not issue a separate decree for other defence witnesses without tangible reasons and the decision of the members of the jury was biased, that the

provision of the code of criminal procedure Section 257 (1) was submitted to the court for easy reference; that the accused claimed that if the application was assumed to be made for the purpose of vexation or delay or for defeating the ends of justice, summoning of a witness could be refused; that it was clearly stated that if refused, the reason must be put on record; that as for presenting the current witnesses, there was no intention concerning the points mentioned above for any reason, especially there was not any intention at all to cause delay; that it was wrong to reject without any evidence and to do so without any reason by deciding that summoning U Kyi Win alone and refusing other defence witnesses without issuing any separate decrees although four witnesses were claimed for examination as stated in the amendment form para-4 were aimed at harming the statements vexation, or delay or defeating the ends of justice prescribed in the provision of the code of criminal procedure Section 257 (1); and that the original court decree should be amended as such mistakes could not be remedied under Section 537 of the code of criminal procedure.

Yangon Division deputy law officer Daw Khin Mar Kyi in her final argument said, in the application for amendments, it was stated that in the original court decree dated 27 May U Kyi Win alone was to be examined as a witness; that refusing other witnesses without any separate decrees was contrary to the code of criminal procedure Section 257 (1); that although it was verbally said that the decree was issued in accord with the Section 257 (1) of the code of criminal procedure, it was not kept on daily record; and she added that according to the daily record of the court dated 27 May, the decision was made as follows:

Daw Aung San Suu Kyi, Daw Khin Khin Win and Daw Win Ma Ma (a) Ange Lay submitted the list of witnesses, law experts U Kyi Win, Daw Khin Moh Moh, U Win Tin and U Tin Oo with regard to their character. There was no argument against the character.

Competent lawyers who advise the clients in the court have the rights to provide their arguments. Our decision is that we will summon Advocate U Kyi Win only to provide evidences in the arguments.

Of the four witnesses nominated by those who

apply for amendments, U Win Tin and U Tin Oo are intended to provide some statements regarding the characters of the applicants. Regarding the characters of the applicants, the court has already made a decision that there is no need to argue. Moreover, in the case filed for Mr John William Yettaw's entering the house of Daw Aung San Suu Kyi, there has not been any accusation against her for her characters. Therefore, the decision not to call and question U Win Tin and U Tin Oo, to say about the characters of the applicants, is not against the law. The applicants have submitted that they wish to hire Daw Khin Moh Moh as a legal expert. Lawyers, who will give the clients advice, have the rights to provide arguments on legal affairs in the case. The court has summoned U Kyi Win as a legal expert, so not calling and questioning Daw Khin Moh Moh is not against the law. Section 257 (1) of Code of Criminal Procedure says, "If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice." So, the court does not need to summon all the witnesses the accused has nominated. Apparently the witnesses the applicants have nominated are the ones who are not needed to present any evidences, so there is nothing more than delay if they are summoned and examined. Therefore, the court's decision not to call and examine those witnesses complies with the law. Therefore, I would say the amendments proposed by the applicants should be dismissed.

Today, Supreme Court Advocates U Kyi Win, U Nyan Win, U Hla Myo Myint and Daw Khin Htay Kywe were on the side of the applicants; and Yangon Division Deputy Law Officer Daw Khin Mar Kyi, Daw Khin May Day and U Myat Khaing, on the side of those who defended the application.

After hearing the final arguments of both sides, Yangon Division Court fixed the date of the 9<sup>th</sup> of June to deliver the judgment on the case.

MNA