BETWEEN

AK MUHD ABDUL HAFIZ BIN PG. ZAINAL **Appellant**

AND

AWG LUFTI BIN HAJI AWANG LAMAT **1st Respondent**
HAJI AWANG LAMAT BIN HJ AWG HASSAN **2nd Respondent**

(Court of Appeal of Brunei Darussalam)
(Civil Appeal No. 17 of 2024)

Steven Chong, C.J., Lunn and Sir Peter Gross JJAs
Date of Hearing: 9th June, 2025.
Date of Judgment: 2nd September, 2025.

Headnote: *Civil- Procedure: (i) O.21, r.2(6) automatic discontinuance rule; and (ii) O.21, r.2(10) discretionary power to reinstate action. Appellant/Plaintiff's appeal dismissed with costs, to be taxed if not agreed; lower Court's orders on costs upheld.*

June 2013-Road Traffic Accident causing personal injuries; March 2016 – action set down for trial; December 2017 – early trial dates sought (not trial ready.)

Automatic discontinuance rule*: initially developed in English law, adopted in Singapore and applied in Brunei – Moguntia-Est Epices SA v Sea-Hawk Freight Pte Ltd [2003] 4 SLR(R) 429 and Malayan Banking Berhad v Maxwell Co. Sdn Bhd & Anor [Civil Suit No. 107 of 2005]; applied case management philosophy – promoting despatch, expedition and efficiency and countering inexcusable delay in litigation;*

- *rule not rendered inapplicable merely because action set down for trial;*
- *Practice Direction No. 3 of 2015- trial dates only allocated once all pre-trial issues resolved;*
- *though incumbent on Court to set trial dates, parties not absolved from duty to do what they can to progress the litigation;*
- *if rule applied, action automatically discontinued.*

Discretionary power to reinstate action- O.21, r.2(10)

- *Reinstatement- exception not the rule – three limbs to be satisfied, cumulatively; Court of Appeal will not lightly interfere with exercise of case management discretion by Registrar or Judge.*

Summary of principles*: automatic discontinuance rule and exercise of discretion to reinstate action automatically discontinued.*

Application: *(i) automatic discontinuance rule, O.21, r.2(6) if applicable, trigger date was 4 August 2018, with guillotine date 3 August 2019; rule remained applicable and action automatically discontinued.*

(ii) discretionary power to reinstate action, O.21, r.2(10)

Court of Appeal declined to interfere with discretionary decisions of Registrar and Judge refusing to reinstate action – although agreeing with the Registrar, and reversing the Judge, that first limb of Moguntia was satisfied; Appellant failed to satisfy second limb of Moguntia.

Ms Subrina Tan Yii Chun and Ms Nuramalina binti Abd Latif (Messrs FORTIS LAW) for Appellant.
Mr Lim Szen (Messrs Susanna Lim Partnership) for Respondents.

Cases cited:
Moguntia-Est Epices SA v Sea-Hawk Freight Pte Ltd [2003] 4 SLR(R) 429
Bannister v SGB plc and others [1998] 1 WLR 1123
Malayan Banking Berhad v Maxwell Co. Sdn Bhd & Anor [Civil Suit No. 107 of 2005]
Tan Kim Seng v Ibrahim Victor Adam [2003] SGCA 49
Ling Siew Yann v Tan Yah Tak, High Court of Brunei Darussalam (Divorce Petition No. 4 of 2014)

JUDGMENT

Sir Peter Gross, J.A.:

INTRODUCTION

1. This Appeal concerns the "*automatic discontinuance*" rule, O.21, r.2(6) of the Brunei Rules of the Supreme Court ("RSC"). It raises questions of importance in the sphere of case management, going to the avoidance of drift and excessive delay in the conduct of litigation. More specifically, two principal Issues arise:

   (I) Whether the automatic discontinuance rule applies in the circumstances of this case? ("Issue I: Application of the automatic discontinuance rule")

   (II) ***If*** the automatic discontinuance rule applies, what is the correct approach to reinstating the action under 0.21, r.2(10), RSC? ("Issue II: Reinstatement of the Action").

2. This is an Appeal by the Appellant from the Judgment of the Intermediate Court Judge, Judge Pengiran Masni binti Pengiran Haji Bahar, dated 12 November 2023 ("the Judge" and "the Judgment"), dismissing the Plaintiff/Appellant's ("the Appellant's") Appeal from the Decision of the Senior Registrar, Hjh Noor Amalina binti Dato Paduka Hj Alaihuddin, dated 16 January 2023 ("the Registrar" and "the Decision"), holding that the automatic discontinuance rule applied and refusing to reinstate the Appellant's Action, Civil Suit No.

195 of 2015 ("the Action"). The Judge and the Registrar thus reached the same conclusion, albeit, as will be seen, in part for different reasons.

3. In a nutshell, the Appellant contends that the Judge and the Registrar erred. The automatic discontinuance rule was inapplicable; if, however, wrong about that, then the Action ought to be reinstated. The Defendants/Respondents ("the Respondents") contend that the Decision of the Registrar and the Judgment of the Judge ought to be upheld.

THE LEGAL FRAMEWORK

4. Without more ado, it is convenient to outline the legal framework.

5. Insofar as relevant, the Brunei RSC, 0.21, r.2 provides as follows:

"*(6) Subject to paragraph (7), if no party to an action or cause or matter has, for more than one year (or such extended period as the Court may allow under paragraph (8)), taken any step or proceeding in the action, cause or matter that appears from records maintained by the Court, the action, cause or matter is deemed to have been discontinued.*
(7) Paragraph (6) does not apply where the action, cause or matter has been stayed pursuant to an order of court.
(8) The Court may, on an application by any party made before the one year referred to in paragraph (6) has elapsed, extend the time to such extent it may think fit.
…
(10) Where an action, cause or matter has been discontinued under paragraph …(6), the Court may, on application, reinstate the action, cause or matter and allow it to proceed on such terms as it thinks just.
(11) For the avoidance of doubt, no new proceedings shall be begun under Order 5, in respect of an action, cause or matter which is deemed to have been discontinued under paragraph …(6)."

6. As to authority on the applicable principles, two decisions are of major significance; the first from Singapore; the second concerns the application of the first in Brunei.

7. In *Moguntia-Est Epices SA v Sea-Hawk Freight Pte Ltd* [2003] 4 SLR(R) 429, Judith Prakash J (as she then was) began her Judgment (at [1]) with these observations:

"*…over the last decade, the courts of Singapore have adopted a proactive approach towards the conduct and control of litigation proceedings. The philosophy manifested in the case management practice we follow is that it is in the best interests of litigants, and the public at large who have an interest in the proper disposition of scarce judicial resources, if every case commenced in the courts is conducted expeditiously and efficiently. To that end, one of the steps adopted was the amendment of 0.21 r2(6) of the Rules of the Supreme Court so as to provide for the automatic discontinuance of any action, cause or matter where no step has been taken by any party for more than one year. The Registrar's appeal…involves a consideration of that rule and of the manner in which the court should exercise the power given to it by sub-r(8) to reinstate such action, cause or matter.*"

That summary, with respect, encapsulates the case management philosophy underpinning the automatic discontinuance rule. Its importance is not diminished by the fact that, in the event (at [16] – [17]), there was no dispute the action had been automatically discontinued; the main issue before the Court went to the manner in which the Court should exercise its discretion to reinstate a discontinued action.

8. Drawing on English authority, in particular *Bannister v SGB plc and others* [1998] 1 WLR 1123, Judith Prakash J then turned to the considerations governing the exercise of the Court's discretion regarding reinstatement of a discontinued action. She put the matter this way (at [21]):

"*…reinstatement applications have to be carefully scrutinised…granting such an application should be the exception rather than the rule. Through rigorous case management, the courts in Singapore have been able to ensure that litigation is carried on with despatch and efficiency. These efforts should not be undermined by being indulgent towards dilatory parties. On the other hand, sub-r(8) recognises that there will from time to time be circumstances in which it is right to reinstate an action that has been automatically struck off. In those rare situations, the court will exercise the power granted by the sub-rule. For Singapore purposes, the guidelines should be reformulated as follows:*

(a) Has the plaintiff satisfied the court that he is innocent of any significant failure to conduct the case with expedition prior to the trigger date having regard to the particular features of the case. If he has not, then reinstatement should be refused;
(b) Has he satisfied the court that in all the circumstances his failure to take any step in the action since the trigger date (and this would include his failure to apply for an extension of time) is excusable, i.e., should be forgiven? If he has not, then again reinstatement should be refused;
(c) Has the plaintiff satisfied the court that the balance of justice indicates that the action should be reinstated? If not then once again reinstatement should be refused."

The three guidelines (i.e., (a) – (c)) have become known, and are referred to in this Judgement, as the "*three limbs*"

9. In the event, Judith Prakash J concluded (at [29]) that she had not been furnished with sufficient facts on which to exercise her discretion to reinstate the action.

10. The seminal Brunei decision is *Malayan Banking Berhad v Maxwell Co. Sdn Bhd & Anor* [Civil Suit No. 107 of 2005], decided by the Hon. Kannan Ramesh JC. After referring to the English law origins of *Moguntia*, the Judge said this (at [14]):

"*The term 'trigger date' was used in Moguntia to refer to the date of the last step in the action as it appears in the court records (whether the step is taken by the plaintiff or the defendant), and the term 'guillotine date' to refer to the day before the anniversary of the trigger date…The three limbs are to be considered and satisfied sequentially. This means that the failure of the plaintiff to satisfy the first limb of Moguntia would be sufficient to dismiss the application to reinstate the action without the need to consider the second limb. Similarly, the failure to satisfy the second limb would mean that the third limb need not be considered. While this was not expressly stated in these terms by Prakash J in*

Moguntia, I considered it clear that this is the correct approach, and indeed the approach that was implied therein."

11. The Judge noted (at [22]) that the purpose of the English and Singaporean equivalent provisions was to discourage delays which had bedevilled litigation in the past. He went on to say this (at [23]) as to the position in Brunei:

    "*I did not think it could be seriously argued that the Bruneian provisions have some other purpose…Indeed, I was of the view that the Bruneian provisions were introduced for the very same reason. This makes inexcusable delay the cornerstone for the application of the rule, and the consideration undergirding the test for reinstatement. It followed…that the length of the delay and the reasons for this must be relevant considerations. The English and Singaporean authorities…are in accord on this. These are the considerations underlying the Moguntia guidelines, which provide a structured and principled framework for assessing whether actions which have been deemed to be discontinued pursuant to O 21 r 2(6) ought to be reinstated.*"

12. Thereafter (at [24] and following), the Judge considered the significance of the expiry of the limitation period and 0.21, r. 2 (11) (set out above) of the Brunei RSC – a provision not found in the English or Singaporean Rules. The Judge concluded (at [32]) that both these considerations told *against* reinstatement. Regarding O.21, r. 2 (11):

    "*The effect of this rule is such that where an action has been inexcusably delayed and reinstatement refused, the claimant is precluded from filing the same action again. That is the line that Brunei has chosen to draw.*"

    Turning to the expiry of the limitation period:

    "*…the fact that the limitation period has expired is a relevant consideration against reinstatement, as the defendant would lose the accrued defence of time bar. A defendant may reasonably expect that no further suit will be brought once the limitation period has expired, and reinstatement would deprive him of the advantage of an accrued time bar. From this, it may be reasoned that 0.21, r. 2 (11) gives rise to an expectation that once a claim has been discontinued, the matter is at an end.*"

13. The fact that Courts in England, Singapore and Brunei take a more proactive, case management role in the conduct of litigation "*…does not detract from the parties' obligation to comply with the time-lines set in the Rules of Court.*": *Tan Kim Seng v Ibrahim Victor Adam* [2003] SGCA 49, at 15; there should be no misunderstanding in this regard. Indeed, the automatic discontinuance rule may be seen to complement the Court's case management role in promoting efficiency and discouraging delay - by serving to moderate the case progression burden otherwise falling on the Court: see, *Automatic Discontinuance under Order 21 Rule 2, First Dormant then Dead,* by Lim Hui Min, (2001) 13 S.Ac. LJ 150, cited in *Tan Kim Seng*, at [11] and [14].

14. We have not overlooked that a party is, of course, not to be penalised for a failure of the Court to take a step in the proceedings: see, *Ling Siew Yann v Tan Yah Tak*, High Court of Brunei Darussalam (Divorce Petition No. 4 of 2014), *per* Edward Timothy Starbuck Woolley

JC, at p.3; and *Akib v Daelim Industrial Co. Ltd. and Others*, In the High Court of Brunei Darussalam (Civil Suit No. 49 of 2019), *per* Muhammed Faisal JC, at pp.2-3. It is, however, noteworthy that in both *Ling* and *Akib*, the actions had reached the very last stage with all pre-trial issues resolved; all that remained was for the Court to fix trial dates.

15. By contrast, setting down a matter for trial does not equate to the matter being ready for trial, as is clear from *Practice Direction 3 of 2015,* which deals with the fixing of hearing dates ("the 2015 PD"). Thus, the 2015 PD provides (2nd Stage PTC, sub-para. c) that "*Once the court is satisfied that all pre-trial issues are resolved, the matter will then be allocated trial dates*." As is apparent, simply because a party has set the case down for trial does not mean that all pre-trial issues are resolved or that the matter will, without more, be allocated trial dates.

16. Pulling the threads together, we summarise the legal framework as follows:

    (1) First, the jurisprudence on the automatic discontinuance rule, together with the criteria informing the exercise of the Court's discretion to reinstate an action thus discontinued, furnishes a clear illustration of Brunei forming part of the common law family. Principles initially developed in English law, were adopted in Singapore and have since come to be applied, with a local variation (O.21, r.2(11)), in Brunei.

    (2) Secondly, the purpose of the automatic discontinuance rule is to give effect to the case management philosophy of promoting despatch, expedition and efficiency in the conduct of litigation, and countering inexcusable delay.

    (3) Thirdly, as the terms of 0.21, r.2 make clear, the automatic discontinuance rule does not apply where the action, cause or matter has been stayed pursuant to an order of the Court (O.21, r.2(7)). It follows both from the structure of 0.21, r.2 and from the case management policy underpinning the rule, that it will generally apply otherwise, at least unless good reason is demonstrated for disapplying it.

    (4) Fourthly, while it is incumbent on the Court to fix trial dates, it is and remains the duty of the parties to do what can be done to make progress with the litigation in accordance with the Rules of Court. The responsibility of the Court to fix trial dates does not absolve the parties from this duty; there should be no misunderstanding in this regard. In any event, it is only when all pre-trial issues are resolved (so that the matter is ready for trial) that trial dates will be allocated. Merely setting down a matter for trial does not equate to the matter being ready for trial.

    (5) Fifthly, reinstatement of an action automatically discontinued provides a necessary safety valve (given the gravity of the consequences if an action is discontinued) but will be the exception, rather than the rule. Were it otherwise, the underlying case management purpose of the rule would be fundamentally undermined.

    (6) Sixthly, the three limbs informing the exercise of the Court's discretion to allow reinstatement pursuant to O.21, r.2(10) must be satisfied sequentially (i.e., cumulatively), the onus being on the applicant for reinstatement to do so.

(7) Seventhly, whether to order reinstatement in an individual case is a matter for the discretion of the Judge, necessarily on a fact specific basis but guided by the test contained in the three limbs.

(8) Eighthly, the Court of Appeal will be slow to interfere with the Judge's exercise of his discretion in this case management context and will only do so on the well-known grounds for overturning a discretionary decision.

THE FACTUAL AND PROCEDURAL HISTORY

17. The factual history can be traced by reference largely to the very helpful Chronology ("the Chronology") attached to the Appellant's Skeleton Argument.

18. As appears from the Chronology, the history of this matter goes back as far as 14 June 2013 when the road traffic accident ("the RTA") took place, giving rise to the Appellant's claim against the Respondents. The Action was commenced on 11 November 2015. Both liability and quantum were and remained in dispute.

19. The Appellant set the matter down for trial on 14 March 2016. On 6 December 2017, in the first Pre-Trial Conference, the Appellant applied for early trial dates to be fixed. Various exchanges then continued between the parties as to disclosure and the medical examination of the Appellant (outside Brunei). On 2 August 2018, the Court vacated the pre-trial conference fixed for 7 August 2018, saying that a new date would be notified in the near future.

20. In the event, the trigger date was on *4 August 2018* ("the trigger date"). Accordingly, the guillotine date for taking a step or proceeding would be *3 August 2019* (the day before the anniversary of the trigger date) ("the guillotine date").

21. Between the trigger and guillotine dates, there was correspondence between the parties' legal representatives over the period 6 – 27 August 2018 – *but* all such correspondence involved communications *from* the Respondents' representatives *to* the Appellant's representatives. The Appellant's representatives did not reply to this correspondence until about one year later, on 5 August 2019, thus, after the guillotine date.

22. Thereafter, the same pattern continued, with the Respondents' representatives writing to the Appellant's representatives and (apparently, from the Chronology) receiving no answer. On 3 March 2021, the Respondents' representatives raised the question of settling the claim but received no answer until almost another year later, on 1 March 2022, when they forwarded the Appellant's Supplementary Bundle of Documents.

23. On 7 June 2022, the Appellant's Representatives wrote to the Court to fix a date for a Pre-Trial Conference, which, in the event took place on 7 July 2022. At that Conference, the Respondents applied for an order that the matter was deemed to be discontinued. On 26 October 2022, as recounted by the Chronology:

"*S&Co* [the Appellant's legal Representatives] *received a letter from the Court informing that this case has been automatically discontinued pursuant to Order 21, Rule 2(6) of* [the] *Supreme Court Rules.*"

24. Thereafter, the Appellant sought to challenge the application of the automatic discontinuance rule and to reinstate the Action. The matter was heard and considered by the Registrar and decided in the Registrar's Decision, to which we next turn.

THE DECISION OF THE REGISTRAR

25. In approaching the Decision of the Registrar, we remind ourselves of the trigger date (4 August 2018) and the guillotine date (3 August 2019).

26. The Appellant had submitted (at [6])) that the Action ought not to be automatically discontinued "*as the case had been set down for trial since 14 March 2016 and that trial dates should be fixed by the court*". There was no further timeline or step required from the Appellant for the matter to proceed to trial; in short, once an action had been set down for trial, it was for the Court to fix trial dates.

27. The Registrar was not persuaded; she said this (at [7]):

"*…the policy consideration behind the rule for deemed discontinuance is clear – it is a case management measure to ensure that actions filed in court are proceeded with diligently, and that those that are not will be deemed to be discontinued. …I would agree that while it is incumbent on the court to fix trial dates, parties are still able to take a step or proceeding after seeking trial dates by filing a notice of intention to proceed under Order 3, rule 5 of the RSC which provides that 'where a year or more has elapsed since the last proceeding in a cause or matter, the party who desires to proceed must give to every other party not less than one month's notice of his intention to proceed. A summons on which no order was made is not a proceeding for the purpose of this rule'".*

28. O.3, r. 5 therefore complemented O.21(at [8]). Here (*ibid*) "*The Plaintiff still could have taken a step by applying to preserve the action under Order 21 Rule 2(8) or filing… the notice of intention to proceed under Order 3, rule 5 but has failed to do either.*"

29. Accordingly, the automatic discontinuance rule applied.

30. As to reinstatement, the Registrar drew guidance (at [9]) from *Malayan Banking*, where the principles formulated in *Moguntia* were applied in Brunei.

31. Applying (at [12]) the "*three-pronged test*", the Registrar accepted under the first limb that the Appellant's claim had proceeded without significant or inexcusable delay up to 4 August 2018 (the trigger date). Prior to that date, the Appellant had acted with reasonable diligence.

32. The Registrar then turned to the second limb (at [13]). She focused on the period between the trigger date and the guillotine date and whether the Plaintiff's failure to take any step during this period was excusable. As appeared from the Chronology, "*there was no formal*

step or proceeding taken by the Plaintiff during this time and it is clear that it was only the Defendant who, outside the realm of the court, tried to spur the action forward based on their correspondences to the Plaintiff dated 6 August 2018, 21 August 2018, 26 August 2018, and 27 August 2018."

33. The Appellant had sought to explain (at [14]) that his inactivity was because of his belief "*…that the proceeding was still alive pending the fixing of new pre-trial conference dates and/or trial dates before the trial judge and that there was also no other procedural application that the Plaintiff was required to take for the matter to proceed to trial.*" The Registrar rejected this argument (*ibid*): "*…whilst I do agree that it is incumbent on the courts to fix trial dates, the Rules of the Supreme Court give to the Plaintiff the initiative in bringing his action on for trial and it is inherent in an adversarial system that relies on parties to an action to take whatever procedural steps appear to them to be expedient to advance their case and proceed to trial. The plaintiff could still have applied for an extension of time under Order 21 Rule 2(8) for the matter to proceed.*"

34. At [16], the Registrar concluded that the Appellant's failure to take any step in this period of time was inexcusable. The Appellant had not therefore surmounted the second limb. There was, therefore, no need to go on to consider the *Moguntia* third limb. Accordingly, the Action was deemed discontinued and not reinstated.

35. Costs were awarded to the Respondents to be taxed if not agreed.

36. From that Decision, the Appellant appealed to the Judge in Chambers, who gave the Judgment (now under Appeal) on 12 November 2023.

THE JUDGMENT OF THE JUDGE

37. After a careful summary of the Registrar's Decision and the arguments before her, the Judge first considered (at [6]) the Appellant's submissions "*…that once an action has been set down for trial, there can be no automatic discontinuance as there is no further step to be taken by the Plaintiff and the tempo is in the hands of the Courts*…". Accordingly, the "*main issue*" was to determine whether the automatic discontinuance rule applied in this case.

38. The Judge agreed with the Respondents (at [10]) that the automatic discontinuance rule did apply in this case. Its purpose was to ensure expeditious proceedings; not all the burden was to be placed on the Court (at [9]). The facts of this case were to be distinguished from those relied on by the Appellant; here (at [11]), the matter had not been forwarded for trial, and the parties had yet to exchange assessments of damages or begin negotiations. Setting down the matter for trial (at [13]), "*…does not equate to the matter being ready for trial*." The Judge went on to say this (at [14]):

"*The pre-trial conferences are [fixed] to ensure that issues have been solved and that documents have been exchanged between the parties and that there is nothing more to be discussed in the preparation for trial. Once the sitting Registrar is satisfied that the matter is ready for trial only then it will be forwarded for trial dates. How can the Plaintiff*

claim that the Plaintiff [was] ready for trial since December 2017 when the first Pre-Trial Conference was only conducted in December 2017…"

The Judge was satisfied (at [15]), in agreement with the Registrar, that the matter was deemed to be discontinued.

39. The Judge next turned to the issue of Reinstatement (at [16] and following). Following a reference to the authorities, the Judge focused on the procedural history, observing (at [24]), "*Although at the last step, it was agreed that the Defendant is to examine the plaintiff by their own Doctor, the Plaintiff should have filed an application for an extension of time to preserve their action but they failed to do so*"; no satisfactory explanation had been provided for this failure. The Judge held (*ibid*) that the Appellant had failed to satisfy the first limb; the case had not been conducted with expedition prior to the trigger date. Even if the Appellant had satisfied the first limb (*ibid*), he would have failed on the second limb: "*The fact remains that …no relevant step had been taken since 4 August 2018*."

40. Accordingly, the Judge agreed with the Registrar and dismissed the Appeal. Costs were awarded to the Respondents, to be taxed if not agreed.

THE RIVAL CASES ON THE APPEAL

41. We briefly outline the rival cases on the Appeal. For *the Appellant*, Ms Tan emphasised that the matter had been set down for trial. There was no more for the Appellant to do; it was for the Court to fix trial dates. Accordingly, the automatic discontinuance rule did not apply. If wrong about that, then this was a case for reinstatement. The Judge was plainly wrong on the first limb. As to the second limb, the matter was awaiting the Respondents' completing the medical examination of the Appellant, a process delayed by Covid. If the Appellant succeeded on the second limb, the balance of justice in the third limb, favoured reinstatement. This was not a case of nothing being done at all and the purpose of the Rules of Court was not to punish the parties. The Appeal should be allowed and the Judgment of the Judge set aside.

42. For *the Respondents*, Mr Lim submitted that the Appeal should be dismissed, and the Judgment of the Judge upheld. The automatic discontinuance rule applied; merely setting the case down for trial did not displace the application of the rule. As of December 2017, (when the Appellant applied for trial dates to be fixed), trial dates could not be fixed, with the parties not yet in a position to exchange rival assessments of damages and engaged in disclosure of salary slips. Far from simply waiting for the Court to fix the trial dates, much remained to be done by the parties. In any event, as appeared from the Chronology (item 46), the Respondents had been prepared to negotiate even though the medical assessment of the Appellant had not yet taken place. Even if the Judge had erred on the first limb, the Appellant's argument for reinstatement could not satisfy the second limb. If the third limb was reached, the balance of justice pointed to refusing reinstatement. There was no reason, let alone sufficient reason, for permitting reinstatement.

43. We record our thanks to both Ms Tan and Mr Lim for their excellent written and oral submissions, together with the Chronology.

44. We turn to the principal Issues and the application of the legal framework to the facts.

ISSUE I: APPLICATION OF THE AUTOMATIC DISCONTINUANCE RULE

45. In our Judgment, the Judge and the Registrar were clearly right: the automatic discontinuance rule remained applicable and was not displaced because the Action had been set down for trial. Our reasons follow.

46. First, the central fallacy in the Appellant's submissions is the attempt to equate setting the matter down for trial with the matter being trial ready. As the Judge observed (at [13]), setting down the matter for trial, "*…does not equate to the matter being ready for trial*." For the reasons given when outlining the legal framework, we entirely agree. The authorities of *Ling* and *Akib* (both *supra*) relied on by the Appellant are both plainly distinguishable on the facts.

47. Secondly, the Appellant was in error in seeking to place the entire burden of case progression on the Court (Judgment, at [9]). As earlier underlined, the responsibility of the Court to fix trial dates does not absolve the parties from their duty of progressing the matter in a timely fashion in accordance with the Rules.

48. Thirdly, the structure of O.21, r.2, on its true construction, draws a distinction between the position which prevails when an action has been *stayed* pursuant to an order of court (O.21, r.2(7)) and other situations. This does not mean that there are *never* circumstances (apart from a stay) where O.21, r.2(6) might not apply - but there needs to be good reason to draw such an inference where no stay is in place. Moreover, too ready a disapplication of the automatic discontinuance rule would undermine the policy underpinning the rule (already set out).

49. Fourthly, here, there was no good reason to displace the automatic discontinuance rule. As explained by both the Registrar and the Judge, it is not correct to say there was nothing further for the Appellant to do once the Action had been set down for trial. Thus, the Registrar alluded, rightly, to the provisions of O.3, r.5 and O.21, r.8; neither was invoked by the Appellant. Furthermore, as underlined by the Judge (at [11] and [14]), the Action was far from trial ready – both in December 2017 when early trial dates were applied for, and all the more so in March 2016 when the Action was set down for trial.

50. We therefore dismiss the Appellant's Appeal on Issue I.

ISSUE II: REINSTATEMENT OF THE ACTION

51. In considering this Issue, the starting point is that it involves an appeal from a discretionary case management decision by the Judge, pursuant to 0.21, r.2(10). As already emphasised, this Court will be slow to interfere with such a decision and will only do so on the familiar well-established grounds.

52. We approach this Ground of appeal, taking the *Moguntia* "limbs" separately, while recognising that they must be cumulatively satisfied for the Appellant to succeed. We note

that both the Registrar and the Judge refused reinstatement but for somewhat different reasons (as seen above).

53. *The first limb:* In this regard, the Registrar concluded (at [12]) that the Appellant had acted with reasonable diligence in the conduct of the case up until the trigger date. The Judge differed (at [24]). We think that the force of the Judge's observations applies to later periods rather than the period preceding the trigger date. With great respect, therefore, the Judge was plainly wrong on this individual point, so that we are entitled to intervene. Whatever the Appellant's later failings, we cannot discern any significant or inexcusable delay prior to the trigger date. Accordingly, we accept Ms Tan's submissions in this regard and conclude that the Appellant satisfied the first *Moguntia* limb.

54. *The second limb:* The focus here is on the period after the trigger date. We conclude, with no hesitation, in agreement with both the Registrar and the Judge, that the Appellant fails to satisfy the second *Moguntia* limb.

55. First, as we have seen, the Registrar (at [13]) pointed to the Appellant's inactivity in this period and underlined that it was the *Respondents* who, "*tried to spur the action forward*".

56. Secondly, the Judge (at [24]) highlighted the following: "*The fact remains that from the court's records, no relevant step had been taken since 4th August 2018.*"

57. Thirdly, these considerations were tellingly illuminated in the Respondents' (written) skeleton argument (at para. 48), drawing on the Chronology:

    "*a) the Appellant did not apply to reinstate this matter until 5th December 2022, more than 3 years after the Guillotine Date….*
    b) although the Court had initially vacated/adjourned the PTC fixed for 7th August 2018…and that parties were waiting for the Court to re-fix PTC dates, the Appellant did not write to the Court to re-fix a PTC date until 7th June 2022 (almost 4 years later or 3 years after the Guillotine Date)…
    c) the Respondents wrote to the Appellant, after the Guillotine Date, vide their letter dated 3rd March 2021 on how to settle this claim…There was no reply from the Appellant until almost another year later (1st of March 2022) with his Supplementary Bundle of Documents and his <u>first assessment of damages</u> (when negotiations could finally begin)…"

58. Fourthly, the Appellant's explanation (recorded by the Registrar, at [14])) was that he thought the Action was still alive pending the fixing of trial dates and that there was no other procedural application which he was required to take. This is essentially the same argument as that relied upon by the Appellant under Issue I. The Registrar and the Judge were not persuaded and nor are we, as already foreshadowed.

59. For these reasons, we see no basis for interfering with the decision of the Judge, and that of the Registrar, on the second limb and, in any event, agree with their conclusions. The Appellant's inactivity following the trigger date is not, or not sufficiently, excused by any misunderstanding of the law, Covid or time spent awaiting the medical examination.

60. *Third Limb:* Given our conclusion on the second limb, it is unnecessary to express any conclusion on the third limb, and we do not do so.

61. It follows that we dismiss the Appellant's Appeal on Issue II and, accordingly, we dismiss the Appeal as a whole.

DISPOSAL AND COSTS

62. For the reasons given:

    (1) On Issue I, we conclude that the automatic discontinuance rule, O.21, r.2(6) remained applicable notwithstanding the Appellant setting the Action down for Trial.

    (2) On Issue II, we decline to reinstate the Action because, as held by the Judge and the Registrar and with whom we agree, the Appellant has failed to satisfy the *Moguntia* Second Limb.

63. Accordingly, the Registrar's and Judge's costs orders are upheld. The Appellant is to pay the Respondents' costs of the Appeal, on the standard basis, to be taxed if not agreed.

64. We add only that this is an unfortunate saga because the Action had initially been diligently conducted but, thereafter, was lost sight of. Insofar as there was any misunderstanding of the law, this Judgment should put that to rest. Parties cannot simply sit back because certain steps in the proceedings need to be taken by the Court. Overall, it is a feature of this Action that the delay has been very considerable: the upshot is that this Appeal has been heard and decided in 2025, some 12 years after the RTA and nearly 10 years after the Action was commenced. In the interests of all concerned with litigation in Brunei, such delay is unacceptable.

STEVEN CHONG, C.J.

LUNN, J.A. **SIR PETER GROSS, J.A.**