

Hajah Arpah Binti Haji Sabtu

... Plaintiff

AND

Abdul Hafyz Bin Hj Matdin

... Defendant

(High Court of Brunei Darussalam)
(Civil Suit No. 1 of 2023)

Edward Timothy Starbuck Woolley, J.C.

Date of Hearing: 13th November, 2024.

Date of Judgment: 25th November, 2024.

Application for stay of proceedings as concurrent Syariah Court proceedings – whether circumstances justifying a stay have been shown – extent to which proceedings deal with the same matter

Mr Anlan Hee Tze Khaw (M/S Yusof Halim & Partners) for the Plaintiff.

Mr Daud Ismail (M/S Daud Ismail & Co.) for the Defendant.

DECISION

Woolley, J.C.:

This is an application by the Defendant to stay these proceedings pending the outcome of a case in the Syariah Court which the Defendant submits concerns the same subject matter and which will affect any judgment here.

2 The subject of both proceedings is a property described as EDR No. BD26517, Lot No. 28670, Kampung Lumapas, Mukim Lumapas, District of Brunei Muara, Negara Brunei Darussalam which, prior to her death on 30 March 2020, was owned by Hajah Noraiani binti Haji Nayan (the deceased). The Plaintiff is the mother, and the Defendant the husband, of the deceased, who lived there as the matrimonial home.

3 By a previous order of the Syariah Court, the shares in the property were divided between the Plaintiff and Defendant and the deceased's brother and sister, but by a subsequent agreement, the brother and sister transferred their shares to the Plaintiff, making her and the Defendant equal owners of the property, which, until March 2021 was occupied by the Plaintiff, the Defendant and the sister. As a result of events in March 2021, which need not concern me here, the Plaintiff and the sister left the property in the sole occupation of the Defendant.

4 By this action, the Plaintiff seeks an order that the property be sold and the proceeds distributed to the Plaintiff and Defendant in equal shares. She also seeks an order that the Defendant pays rent for his occupation of the property until it is sold.

5 The proceedings in the Syariah Court have been brought by the Defendant seeking a greater share in the property than originally granted by that Court on the basis that, although the property was owned by the deceased prior to their marriage, he contributed both directly

and indirectly sums of money for renovations, extensions and improvements to the property which, he submits, under Syariah law entitle him on the same basis as assets acquired during a marriage. I am told that the hearing before the Syariah Court is due to commence on 2 January 2025.

6 It is submitted by Mr Ismail on behalf of the Defendant that the proceedings in the Syariah Court regarding the Defendant's matrimonial rights to the property warrants a stay of these proceedings to avoid conflicting outcomes and contradictory rulings in the courts. Mr Hee for the Plaintiff, however, points out that the two actions concern different aspects of the administration of the estate: the proceedings here are for sale of the property, which is not apparently opposed by the Defendant as, in his own pleading to the Syariah Court, he requests that the proceeds of sale of the property be divided according to the percentage determined by that Court; in the Syariah Court the only matter for consideration is the share of the Defendant in the estate. The only matter which may cause any conflict, he submits, would be the division of the proceeds following sale. I would add to that the claim for rent, which, if granted by the Court, would also be affected by his share in the property.

7 It is not in dispute that the Court has a discretion to grant such a stay to avoid potentially conflicting decisions, and to prevent any injustice to either party. It is also settled law that, in relation to the estate of a deceased Muslim, the Syariah Court has jurisdiction as to its administration. However, this Court does have jurisdiction to order sale of a property and the question of administration of the estate only relates to the proceeds of sale, which has been conceded by the Defendant in his pleading before the Syariah Court. There can accordingly be little prejudice to the Defendant by refusing a stay, subject to conditions, whereas the Plaintiff, being already 75 years old, might be prejudiced by a delay in concluding this matter.

8 There is also the question of delay by the Defendant. As has been submitted by counsel for the Plaintiff, the Defendant has not given any reasons why he delayed filing his claim in the Syariah Court until March 2024, nearly two and half years after the original order in respect of distribution of the estate, and 15 months after the commencement of this action.

9 I need not here look into the Defendant's case in the Syariah Court or his prospects of success there, only if it is possible that there may be conflicting judgments. I have to consider whether the Defendant has shown that there are circumstances here which are sufficient to justify a stay. I am not satisfied that there are. I accept the submission of the Plaintiff's counsel that the two courts are, in effect, considering different matters: here, whether there should be an order for sale of the property; in the Syariah Court whether that court's original order as to the distribution of the estate, including the proceeds of sale of the property, should be changed in the Defendant's favour.

10 I am therefore satisfied that a stay of the whole proceedings in this Court is not justified. However, there are two matters which will have to await the decision of the Syariah Court. These I have already referred to in paragraph 6 above, namely the division of the proceeds of sale, and, if rent is ordered to be paid, the proportion due to the Plaintiff. Both these difficulties can be overcome by making further orders: that the proceeds of sale be held in Court in an interest bearing account until the Syariah Court or an appeal therefrom has delivered a final ruling as to distribution of the estate; and that, should an order be made for payment of rent by the Defendant, that this be assessed by a Registrar of the Court after the said ruling by the Syariah Court or Appeal Court.

11 Subject to the two orders above, I accordingly dismiss this application, with costs to the Plaintiff in any event.

A handwritten signature in black ink, appearing to read 'E. Starbuck Woolley', written in a cursive style.

EDWARD TIMOTHY STARBUCK WOOLLEY
Judicial Commissioner