

Mohammad Shafique Bin Hj Mohd Hussain

... Plaintiff

AND

Lailatul Zubaidah Bte Hj Mohd Hussain

... Defendant

**(High Court of Brunei Darussalam)
(Civil Suit No. 63 of 2023)**

Edward Timothy Starbuck Woolley, J.C.

Date of Hearing: 12th November, 2024.

Date of Judgment: 25th November, 2024.

Appeal from order striking out statement of claim – claim to set aside grant of letters of administration and for maladministration of deceased’s estate – whether properly pleaded – effect of Article 84C of the Constitution of Brunei Darussalam – consideration of concurrent proceedings in the Syariah Court

Md Shazale Hj Mat Salleh (M/S Mohd Shazale Salleh) for the Plaintiff.

Ms Hjh Dyg Azimah Binti Hj Mohammad Hambali (M/S Hasnah Hassan & Associates) for the Defendant.

Cases cited:

Malai Nuridah Sheikh Mohammad v Brunei Shell Petroleum Company Sdn Bhd and Ken Marnoch HCCS No 8 of 2015

Haji Ahmad Morsidi bin POKDSDDL U Hj Abdul Rahman v Haji Awang Mohammad Junaidi bin POKDSDDL U Hj Abdul Rahman and anor OS No 39 of 2008

JUDGMENT

Woolley, J.C.:

This is an appeal by the Plaintiff against the decision of the Hon Registrar Muhammad Syafiq bin Awang Haji Zakaria striking out the Plaintiff’s statement of claim on the grounds that it is scandalous, frivolous and vexatious, and an abuse of the process of the Court.

2 These proceedings concern the administration of the estate of the late Hjh Fatima binti Haji Abdul Aziz (the deceased) who died on 9 November 2014. Letters of Administration (LA) of the estate were granted to the Defendant on 8 August 2015 and the Plaintiff, in his statement of claim, asks the Court to revoke the LA and declare them null and void and order that the Plaintiff be appointed administrator in her place. He also requests orders regarding the administration of the assets of the estate. The Plaintiff and the Defendant are two of the four children of the deceased.

3 The Plaintiff’s claim against the Defendant appears to fall into two parts: the first that proper procedures had not been followed and that the LA should not have been granted, as purportedly pleaded in paragraphs 8 to 12 of the statement of claim; the second that the estate has been maladministered as set out in paragraphs 13 to 23 of the statement of claim.

- 4 The first claim is based on pleaded allegations that:
- (i) the Defendant has never obtained an order from the Syariah Court to confirm her entitlement to act as an Administrator according to Muslim law;
 - (ii) she similarly failed to obtain a Faraid order from the same court to determine the beneficiaries and their shares in the estate;
 - (iii) she did not make a statutory declaration in the Magistrate's Court to allow her to become an Administrator.

It is pleaded that, without the orders from the Syariah Court she should not have been granted the LA. It is not stated what is the effect of failing to make a statutory declaration under (iii) above.

5 It is not clear from this what is being alleged, whether it is fraud or similar conduct on the part of the Defendant, or some fault on the part of the Probate Officer which the Court is being asked to put right. Either way, it is clear that the Plaintiff is claiming the LA should not have been granted.

6 In respect of the claim relating to failures on the part of the Defendant, there are two problems with the pleading as it stands. The first of these is that it is not pleaded that there is a statutory or other requirement to obtain the orders from the Syariah Court and make the statutory declaration in order to obtain the LA, or what that statutory requirement is, nor that the Defendant has been in breach of such a requirement. Without such pleading the Defendant cannot know what she is accused of. The second follows from this, that there is consequently no allegation of breach of duty or fraud on the part of the Defendant and it is therefore impossible for her to properly plead a defence without knowing precisely what the allegations are. The Defendant has admitted in the defence that the above orders were not obtained and the statutory declaration not made, but that does not help the Plaintiff if it is not pleaded that the omissions amounted to a breach of duty or a statutory requirement, or fraud.

7 If the Plaintiff is maintaining that the Probate Officer is at fault, or in breach of duty, in granting the LA, which is also not clear, then I am bound by previous decisions of this Court which have held that such a contention cannot be considered by the Court because of the provisions of Article 84C of the Constitution of Brunei Darussalam. This provides, in effect, that any decision by a party acting on behalf of His Majesty in the performance of any public function, including any question relating to compliance with any procedural requirement governing such decision, cannot be judicially reviewed by the Court. This extends to any action relating to or arising out of any such decision. This affords a complete defence to this part of the claim as far as it concerns the Probate Officer and it follows that, as far as this part of the statement of claim is concerned it discloses no cause of action. The Plaintiff has also sought, belatedly, to add, in submissions by counsel, an allegation relating to advertising the petition after the LA had been granted. Even if this were added, it does not assist the Plaintiff, as it is an allegation against the Probate Officer, not the Defendant, which again would be barred by Article 84C.

8 Even if the Plaintiff were to amend the statement of claim to plead that the Defendant was in breach of some statutory or other legal requirement, there remains the allegation that the Probate officer should not have granted the LA in these circumstances, which still falls foul of Article 84C. The only way that this part of the claim could stand is if there were some allegation of fraud, breach of duty or similar behaviour on the part of the Defendant, which there is not.

9 The principles regarding striking out under Order 18, rule 18 of the Supreme Court Rules have been considered many times in this Court and were summarised from previous authorities by Steven Chong J (as he then was) in *Malai Nuridah Sheikh Mohammad v Brunei Shell Petroleum Company Sdn Bhd and Ken Marnoch* HCCS No 8 of 2015 as follows:

In general it is only in plain and obvious cases that the power to strike out should be invoked and the Court will let the plaintiff proceed with the action unless his case is wholly and clearly unarguable.

A “reasonable cause of action” has been defined as a cause of action which has some chance of success when only the allegations in the pleading are considered.

A proceeding is frivolous or vexatious if it is “obviously unsustainable”.

10 It follows from what I have said above in paragraphs 6 to 8 that the part of this claim, in so far as it refers to the granting of the LA, has no prospect of success, is clearly unarguable as it stands and must therefore be struck out. There is no amendment or further particulars which can remedy it without presenting a completely new claim against the Defendant, which is not the purpose of amendments or particulars, which are to clarify not to change. While I accept that section 47 of the Probate and Administration Act enables the Probate Officer to revoke letters of administration upon good cause being shown, nothing pleaded in this part of the statement of claim comes close to any definition of “good cause”, although I accept that establishing maladministration of the estate may do so.

11 Which brings me to the second part of the Plaintiff’s claim which relates to the administration of the estate by the Defendant. Although the claims in the statement of claim are vague and unparticularized, referring to bank accounts, lands, jewellery and other assets in general terms without identifying them, it is clear that the Defendant has had no difficulty in drafting a defence in which she herself lists the assets of the estate. The claims of misappropriating money and jewellery, and lack of accounting, are clear enough, subject possibly to further and better particulars. However, it has been conceded by counsel for the Plaintiff that, under the provisions of the Syariah Courts Act, this Court does not have the jurisdiction to adjudicate the claim of maladministration in respect of the estate of a deceased Muslim as is the case here, which is solely within the jurisdiction of the Syariah Court. This was considered by Gareth Lugar-Mawson JC in the case of *Haji Ahmad Morsidi bin POKDSDDLU Hj Abdul Rahman v Haji Awang Mohammad Junaidi bin POKDSDDLU Hj Abdul Rahman and anor* OS No 39 of 2008 who, at the same time, found that this Court does have the power to remove a person as administrator of an estate but can only do so if satisfied that there was maladministration, but said that whether there was such maladministration cannot be addressed until the Plaintiff’s claims in that regard had been dealt with by the Syariah Court. That must be right, and I am faced with an identical situation here. As far as questions as to the administration are concerned it can only be dealt with by the Syariah Court.

12 It is submitted on behalf of the Defendant that, the Syariah Court having sole jurisdiction, the claim here should be struck out. This, however, ignores the fact that there is still inherent jurisdiction in this Court to remove an administrator for maladministration, as found by Lugar-Mawson JC above. I can see no reason therefore not to make an order similar to that made by the learned Judicial Commissioner in respect of the part of the action which relates to maladministration.

13 I will accordingly allow the appeal against the Learned Registrar’s decision in part by ordering that the proceedings here relating to maladministration of the estate of the deceased be stayed until such time as the Syariah Court has dealt with all of the Plaintiff’s claims as to

the administration of the estate and, either the time for bringing an appeal against the Syariah Court's decision on those claims has passed, or the Syariah Court of Appeal has given its judgment on any appeal that may be brought against that decision.

14 In respect of the part of this claim relating to the granting of the letters of administration, for the reasons given above, the appeal is dismissed and I order that paragraphs 8 to 12, and the first prayer (a) of paragraph 26 of the statement of claim be struck out.

15 As both parties have been partially successful in this appeal, I order that costs of this appeal and the costs before the Registrar be costs in the cause.

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

EDWARD TIMOTHY STARBUCK WOOLLEY
Judicial Commissioner