

**ENNY MARTHEN**

**... Plaintiff**

AND

**NICHOLAS CHIN CHEE WAI & ANOR**

**... Defendants**

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**(High Court of Brunei Darussalam)  
(Civil Suit No. 54 of 2021)**

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Muhammed Faisal bin PDJLD Kol (B) DSP Hj Kefli, JC

**Date of Ruling: 5<sup>th</sup> December, 2024.**

*Headnote: Family Law – Grant of Letters of administration – Plaintiff seeking grant of letter of Administration – Defendants objecting – 1<sup>st</sup> defendant instead applying for letters of administration – Plaintiff claims priority as surviving spouse – Defendants asserts plaintiff unable to discharge duties as administrator*

Ms. Siti Nadirah Binti Hj Abd Rahim (M/S Raed Lim Advocates & Solicitors) for Plaintiff.  
Pg Izad Ryan Bin PLKD Pg Haji Bahrin (M/S Pengiran Izad & Lee) for Defendants.

**Cases cited:**

*Kwonq Sin Hwa v Lau Lee Yen* [1993] 1 SLR(R) 90  
*Toh Seok Kheng v Huang Huiqun* [2010] SGHC 108  
*Estate of Potticary* [1927] 1 P 202  
*Estate of Biggs* [1966] 2 WLR 536  
*Yap Kee Par v Molly Yap & Ors* [1996] 4 MLJ 219

**Statutes:**

Section 28(4) of the Probate and Administration Act (PAA Act)  
Section 5 of the Wills Act (Cap. 193)

**RULING**

**Muhammed Faisal, JC:**

**I. INTRODUCTION**

This matter concerns the administration of the estate of the late Jacob Chin Yin Wah (“the deceased”), who passed away intestate. The deceased left behind his second wife, Enny Marthen (Plaintiff), and three children from his first marriage: Nicholas Chin Chee Wai (1<sup>st</sup> Defendant), Jacqueline Chin (2<sup>nd</sup> Defendant) and Jimmy Chin.

The Plaintiff seeks to be appointed as the sole administrator of the estate, relying on her position as the surviving spouse and claiming statutory priority under Section 28(4) of the Probate and Administration Act (PAA Act). The 1<sup>st</sup> Defendant opposes her appointment, asserting that she is unsuitable for the role, and seeks to be appointed instead.

The 2<sup>nd</sup> Defendant supports the 1<sup>st</sup> Defendant's claim, while Jimmy Chin, the youngest is not a party to these proceedings. The estate comprises significant properties and financial assets, making the proper administration of the estate a matter of importance.

## **II. AGREED FACTS**

The following facts are agreed upon by both parties and are treated as non-contentious in this matter:

- 1. The late Jacob Chin Yin Wah ("the deceased") died intestate on 7th February 2021 from prostate cancer and heart disease.*
- 2. The deceased was of Chinese descent and was of Christian faith.*
- 3. Prior to the deceased's death, the plaintiff and the deceased resided at No. 32, Simpang 232, Jalan Muara, Kampung Sungai Akar, BC 4115, Brunei Darussalam.*
- 4. The deceased was a divorcee prior to his marriage to the plaintiff. He had three (3) adult children from his previous marriage, two of whom are named as the 1st and 2nd defendants, while the youngest son is named Jimmy Chin Chee Ming ("Jimmy Chin"). The 2nd defendant is of the Muslim faith.*
- 5. Following the deceased's passing, three (3) separate meetings were held at the deceased's house and St. Andrew's Church on 26th February 2021, 12th March 2021, and 30th March 2021, respectively.*
- 6. The meeting on 12th March 2021 was attended by the plaintiff, the defendants, Jimmy Chin, and St. Andrew's Church pastors. The purpose of the meeting was to determine if any will was left by the deceased. At the meeting, some of the deceased's personal belongings and documents were removed from the house and kept at St. Andrew's Church.*

7. *It is not disputed that the deceased did not leave any written will.*

*B. STATEMENT OF ISSUES TO BE TRIED*

1. *Who should be appointed as administrator of the estate of the Deceased?*

**III. PLAINTIFF CASE**

Enny Marthen (the Plaintiff), the deceased widow, described her life with the deceased as one built on mutual trust and companionship, particularly in the final years of his life. She recounted how she moved to Brunei in 2003 and later married the deceased in 2017, becoming his closest confidante and sole caregiver during his illness with cancer. The Plaintiff detailed her sacrifices, including accompanying the deceased to medical appointments and ensuring his comfort both at home and in the hospital. She emphasized that the deceased expressed his verbal wishes to her on multiple occasions, stating that she should manage his estate and that he did not want his children, whom he viewed as independent and distant, to inherit directly. This unique claim about the deceased's verbal intentions, which he chose not to formalise in a will, underscores the Plaintiff's belief that she is the most suitable person to fulfill the deceased's wishes.

Nixon Chin (Dw2), the deceased's nephew, supported the Plaintiff's account and provided insights into the deceased's strained relationships with his children. Nixon recounted how the deceased confided in him about his disappointment in the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, who the deceased felt had grown emotionally and physically distant. According to Nixon, the deceased explicitly stated his preference for the Plaintiff to inherit and manage his estate, as he believed she would preserve his legacy responsibly. Nixon also highlighted his observations during the deceased's final days, noting the Plaintiff's unwavering commitment to his care and contrasting this with the absence of 1<sup>st</sup> and 2<sup>nd</sup> Defendants, who rarely visited or engaged with their late father.

Nurul Jannah (Dw3), Nixon's wife, described the deceased's personality as warm and kind but noted his deep sense of disappointment and mistrust toward his children. She observed that while Jimmy Chin occasionally visited, the 1<sup>st</sup> and 2<sup>nd</sup> Defendant were noticeably absent during the deceased's illness, leaving the Plaintiff to shoulder the responsibilities alone. Nurul Jannah also recalled specific incidents after the deceased's death that revealed the children's contentious behavior, including their removal of documents from the deceased's locked study without the Plaintiff's consent and the 2<sup>nd</sup> Defendant destroying the deceased's bank cards during a church meeting. These actions, in her view, reflected a lack of respect for the Plaintiff's role as the deceased's widow and exacerbated the already tense family dynamics.

Following the deceased's passing on February 7, 2021, the Plaintiff immediately took on the burden of handling administrative responsibilities, such as halting the deceased's pension payments and notifying relevant authorities. Nurul Jannah, who assisted the Plaintiff in these efforts, described her as proactive, capable, and focused despite her grief. The Plaintiff's ability to navigate complex bureaucratic processes during such a challenging time demonstrated her competence and suitability to manage the deceased's estate. This proactive behavior was further corroborated by Nixon, who observed how the Plaintiff prioritised the deceased's legacy while handling her responsibilities with diligence.

They also emphasised the disparity between the Plaintiff's devotion and the behavior of the 1<sup>st</sup> and 2<sup>nd</sup> Defendant. Nixon and Nurul Jannah recounted that the 1<sup>st</sup> Defendant's first interaction after Jacob's death was an inquiry about the will, which they perceived as insensitive and indicative of misplaced priorities. They described the Plaintiff's exclusion from key discussions and decisions about the deceased belongings, often facilitated by the children's use of English, a language the Plaintiff struggled with, rather than Malay, which she understood. These actions, according to the witnesses, revealed a lack of cooperation and respect toward the Plaintiff during a vulnerable time.

#### **IV. DEFENCE CASE**

The 1<sup>st</sup> and 2<sup>nd</sup> Defendant together, refuted claims of estrangement from their father, challenged the narrative advanced by the Plaintiff and questioned her suitability as the administrator of the deceased estate. Each of them also provided distinct perspectives and details to support their shared position.

Both the 1<sup>st</sup> and 2<sup>nd</sup> Defendant disputed the Plaintiff's portrayal of their relationship with their father as distant or estranged. Nicholas, the 1<sup>st</sup> Defendant emphasised that he shared a longstanding bond with his father, characterized by regular phone calls and meetings. He rejected the notion that he was absent during the decease's illness, noting that he visited his father and supported him when possible. Similarly, Jacqueline, the 2<sup>nd</sup> Defendant, recounted that while she had established her own family and was not physically present with the decease as often, she maintained a personal relationship with him. She revealed that her father sought her forgiveness during his final days for any past grievances, which she granted, underscoring their connection despite any earlier challenges in their relationship.

The 2<sup>nd</sup> Defendant also highlighted her status as the decease's daughter from his first marriage, a relationship that predated the Plaintiffs role in the decease's life by decades.

The 2<sup>nd</sup> Defendant argued that it was inappropriate for the Plaintiff to make assumptions about her relationship with her father, given the short duration of the Plaintiff's marriage to the deceased. The 2<sup>nd</sup> Defendant firmly denied being disowned by the deceased, pointing out that he died intestate and did not create a will to exclude her or her siblings from the estate.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants both raised concerns about the Plaintiff's handling of the deceased's assets and estate. The 1<sup>st</sup> Defendant accused the Plaintiff of collecting rental income from estate properties and depositing it into her personal account without proper authorization or accounting. He calculated the unaccounted rental income to be approximately BND 40,000 and argued that such actions demonstrated a lack of transparency and respect for legal obligations. The 2<sup>nd</sup> Defendant supported these claims, adding that the Plaintiff inflated estate expenses by including personal costs, such as utility bills and internet charges, which were unrelated to the estate.

Both siblings expressed frustration over the Plaintiff's failure to pay for the deceased's funeral arrangements. The 2<sup>nd</sup> Defendant noted that she and their mother, Helen Chin, along with her siblings, contributed to the burial plot and related expenses, while the Plaintiff allegedly refused to pay for additional costs, including air conditioning units needed during the wake. The 2<sup>nd</sup> Defendant further described how, nine months after the deceased's death, no tombstone had been erected. She eventually took it upon herself to fund and arrange for a simple tombstone to honor their father's memory, despite the Plaintiff's objections to its color and design.

The siblings described incidents that highlighted their contentious relationship with the Plaintiff regarding the management of the deceased's estate. The 2<sup>nd</sup> Defendant recounted a family meeting at the deceased's matrimonial home, where she and the 1<sup>st</sup> Defendant searched for estate-related documents. She acknowledged entering the deceased's study to retrieve these documents but insisted that this was done in good faith to locate critical papers. Both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants denied removing items from the house without the Plaintiff's consent, asserting that all items were left for the church pastors to safeguard.

The 2<sup>nd</sup> Defendant also described a subsequent meeting at St. Andrew's Church, where she refused to engage in discussions with the Plaintiff or Nixon without legal representation. She justified this stance as necessary to protect her interests, given the ongoing disputes. During this meeting, the 2<sup>nd</sup> Defendant cut up the deceased's bank cards, an action she explained as part of safeguarding the estate, although it was perceived by the Plaintiff and Nixon as hostile. The 2<sup>nd</sup> Defendant maintained that her actions were in line with her responsibility to protect her father's legacy.

Both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants strongly contested the Plaintiff's application to be the estate administrator. The 1<sup>st</sup> Defendant emphasized his own qualifications, including his extensive experience in accounting, finance, and risk management, which he believed made him better suited for the role. The 2<sup>nd</sup> Defendant echoed this sentiment, arguing that the Plaintiff's actions demonstrated bias and a lack of transparency. The siblings expressed concern that the Plaintiff sought to exclude them from their rightful inheritance, contrary to the laws of intestacy, and accused her of concealing estate dealings to serve her interests.

The 2<sup>nd</sup> Defendant highlighted contradictions in the Plaintiff's statements, noting that the Plaintiff alternately claimed to have full knowledge of the deceased's wishes and admitted uncertainty about his intentions regarding certain properties. Such inconsistencies, according to the 2<sup>nd</sup> Defendant, undermined the Plaintiff's credibility and demonstrated her unsuitability to manage the estate.

Both siblings emphasized that the deceased's estate must be distributed in accordance with Brunei's intestacy laws, which they argued ensure equal shares for the surviving spouse and children. They refuted the Plaintiff's claims of verbal instructions from the deceased to exclude his children, asserting that such claims are legally invalid. The 2<sup>nd</sup> Defendant also referenced Chinese customary law, which supports equitable inheritance among heirs, regardless of gender or faith.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants concluded their testimonies by expressing their desire for a lawful and impartial administration of the estate. They argued that the 1<sup>st</sup> Defendant's professional expertise and their shared commitment to preserving the deceased's legacy made them the rightful candidates to oversee the distribution of his assets. They urged the court to reject the Plaintiff's application and ensure that the estate is managed in accordance with the law.

## V. **DISCUSSIONS**

### *The Plaintiff's Case*

The Plaintiff's primary claim is based on her entitlement as the surviving spouse under Section 28(4) of the PAA Act, which grants the spouse priority in letters of administration. She argues that her close relationship with the deceased and her active involvement in managing his affairs make her the most appropriate candidate for administrator. The Plaintiff relies on several key points:

*Close Relationship with the Deceased.* She asserts that she was the deceased's primary care giver in his later years and that their relationship was one of mutual trust and

confidence. She claims to have managed household and financial affairs for the deceased, giving her a deep understanding of the estate's operations.

*Alleged Verbal Instructions.* The Plaintiff testified that the deceased expressed verbal wishes to disinherit his children and leave his entire estate to her. She stated that these instructions reflected the deceased's estranged relationship with his children and his intention for her to oversee the estate's management.

*Proactive Role Post-Death.* Following the deceased's passing, the Plaintiff claims to have taken steps to manage estate properties and address administrative issues, such as halting pension payments. She also collected rental income from a property to cover maintenance expenses.

The Plaintiff cited *Kwonq Sin Hwa v Lau Lee Yen [1993] 1 SLR(R) 90* to support the validity of her marriage, which the defendants questioned. The Plaintiff argued that this case confirms that a marriage, once duly registered, cannot be invalidated based on motives or personal circumstances.

The Plaintiff also relied on *Toh Seok Kheng v Huang Huiqun [2010] SGHC 108*, arguing that statutory priority for a surviving spouse is a strong presumption unless there are clear and compelling reasons to override it.

#### *The Defendants' Case*

The Defendant's oppose the Plaintiff's appointment, raising the following concerns.

*Unsuitability of the Plaintiff.* The Defendants assert that the Plaintiff is unsuitable due to her intent to disinherit the children, unauthorised dealings with estate assets, and dependence on third parties. Evidence was presented showing that the Plaintiff collected rental income without the probate officer's approval, failed to account for the funds, and had inconsistencies in her statements regarding the estate's management.

*Verbal Instructions Are Legally Irrelevant.* The defendants refuted the Plaintiff's reliance on alleged verbal instructions from the deceased. They cited **Section 5 of the Wills Act (Cap. 193)**, which mandates that wills must be in writing to be legally enforceable.

*Practical and Cultural Concerns.* The Plaintiff's immigration status as a non-resident was highlighted as a limitation to her ability to manage the estate effectively. The defendants also pointed to the Plaintiff's failure to construct the deceased's tombstone as a breach of Chinese customs, questioning her commitment to honoring the deceased's legacy.

The 1<sup>st</sup> Defendant emphasised his qualifications, education, and experience, arguing that he is better suited to handle the estate. Citing *Estate of Potticary [1927] 1 P 202 and Estate of Biggs [1966] 2 WLR 536* to support bypassing an otherwise entitled individual due to unfitness or misconduct.

The 1<sup>st</sup> Defendant also relied on *Yap Kee Par v Molly Yap & Ors* [1996] 4 MLJ 219, which held that dependency on others and lack of qualifications can disqualify an individual from serving as an administrator.

## VI. COURT'S FINDINGS

### *Plaintiff's Conduct*

The Plaintiff's actions raise significant concerns about her ability to administer the estate impartially and competently. Evidence shows that she:

- Collected rental income from estate properties without authorisation, in breach of Section 13 of the PAA Act. Her failure to account for these funds undermines transparency and raises doubts about her intentions.
- Made inconsistent statements regarding the deceased's alleged wishes, the management of estate matters, and her own financial dealings. These inconsistencies further erode her credibility.
- Relied heavily on associates, such as Nixon Chin and Nurul Jannah, for administrative tasks. This dependency indicates a lack of independence and competence.

### *Suitability of the 1<sup>st</sup> Defendant*

The 1<sup>st</sup> Defendant has demonstrated a clear understanding of his fiduciary duties and a commitment to lawful and equitable administration. He presented a compelling case for his suitability, including:

- His education and experience, which equip him to manage the estate effectively.
- His understanding of cultural and legal obligations, ensuring the estate is administered in a manner consistent with both statutory requirements and family traditions.
- Support from the 2<sup>nd</sup> Defendant, reflecting confidence in his ability to act impartially.

In *Estate of Potticary* [1927] 1 P 202, the court bypassed executors who demonstrated misconduct, emphasising the importance of protecting the estate from unfit individuals. The 1<sup>st</sup> defendant used this to argue that the Plaintiff's unauthorised dealings with estate funds render her unfit.

In *Estate of Biggs* [1966] 2 WLR 536, the court excluded an executor who exhibited hostility and disregard for fiduciary duties. This reinforces the argument that the Plaintiff's intent to disinherit beneficiaries disqualifies her.

In *Yap Kee Par v Molly Yap & Ors* [1996] 4 MLJ 219, dependency on others and lack of qualifications can justify bypassing an individual. The 1<sup>st</sup> Defendant used this case to highlight the Plaintiff's reliance on third parties.

## VII. **CONCLUSION**

Considering the evidence and submissions, the court finds that the Plaintiff's conduct, reliance on verbal instructions, and unauthorised dealings demonstrate her unsuitability. The 1<sup>st</sup> Defendant, by contrast, has shown he is equipped to fulfill the fiduciary responsibilities of an administrator.

The court hereby appoints Nicholas Chin Chee Wai as the sole administrator of the estate of the late Jacob Chin Yin Wah. The Plaintiff's application is dismissed.

Cost to the defence, to be taxed if not agreed.

**MUHAMMED FAISAL BIN PDJLD KOL (B) DSP HJ KEFLI**  
Judicial Commissioner