

Haji Mohd Yussof bin Haji Awang Besar

... Applicant

AND

**Bank Islam Brunei Darussalam Berhad
Abdul Wahab bin Junaidi**

**... 1st Respondent
... 2nd Respondent**

**(High Court of Brunei Darussalam)
(Originating Motion No. 2 of 2025)**

Muhammed Faisal Bin PDJLD DSP Kol(B) Haji Kefli, J.C

Date of Ruling: 18th August 2025.

Headnote: Application for leave to appeal – Bankruptcy – Proof of debt – Whether debt to 2nd Respondent had been satisfied – Sale of property by Official Receiver – No challenge to debt owed to 1st Respondent – Appeal filed out of time – Section 98 Bankruptcy Act (Cap. 67) – No arguable ground of appeal – Leave refused.

Applicant In Person.

Mr Muhd Nicholas Bin Muhd Jamil Abas @ Nicholas Martinez Chiew of Messrs Pg Izad & Lee for the 1st Respondent.

Mr Mathew Chiew Siew Koun of Messrs MCSK Advocates & Solicitors for the 2nd Respondent.

Statutes:

Section 43 of the Bankruptcy Act (Cap. 67)

Section 58(1) of the Bankruptcy Act (Cap. 67)

Sections 60(a) of the Bankruptcy Act (Cap. 67)

Section 98 of the Bankruptcy Act (Cap. 67)

RULING

Application for Leave to Appeal

Muhammed Faisal, J.C:

Background

1. This is an application by Haji Mohd Yussof bin Haji Awang Besar, for leave to appeal to the Court of Appeal against the decision of the Deputy Official Receiver dated 12 December 2024, made in Bankruptcy No. 87 of 2004.

2. This involves the admission of the 2nd Respondent's proof of debt in the amount of B\$133,500, and the approval for the sale of the Applicant's property known as Lot 4259, Kampong Sungai Bakong, Lumut, by way of public auction.
3. The Applicant contends that the 2nd Respondent's claim is without basis, alleging that the debt has already been fully satisfied through a combination of cash payments and the transfer of a 50% share in Lot 27649, in accordance with a Sale and Purchase Agreement dated 7th December 2001. He further asserts that he has, in fact, overpaid by B\$12,750.
4. The 2nd Respondent disputes this, relying on the agreement which he submits clearly stipulates a structured payment of B\$20,000 upon signing, a further B\$30,000 upon transfer approval, and 96 monthly instalments of B\$1,500 from January 2002 to December 2009.
5. The Applicant filed this motion on 13th January 2025, approximately one month after the Official Receiver's decision. However, due to court scheduling, the matter was not heard until after the property was sold at public auction on 5th April 2025. The Applicant remains in occupation of the said property.
6. Following the hearing, the Court received a letter from counsel for the 1st Respondent, Messrs Pengiran Izad & Lee, providing clarification on the bankruptcy context. It was submitted that an Adjudication Order was made against the Applicant on 26 July 2012, and that Lot 4259 vested in the Official Receiver pursuant to section 58(1) of the *Bankruptcy Act (Cap. 67)*. The Trustee, it was explained, was empowered under sections 60(a) and 43 of the Act to sell the property for the purpose of settling debts.
7. The letter also noted that the Applicant's affidavit does not dispute the debt owed to the 1st Respondent, nor does it challenge the Trustee's statutory power to sell. Rather, the application is confined to disputing the proof of debt filed by the 2nd Respondent.
8. The matter was heard again on the 24th July 2025 for the Applicant and 2nd respondent to make any proper reply on the matter.
9. The general principle is that leave to appeal to the Court of Appeal will only be granted where the proposed appeal raises a genuine and arguable question of law or fact, is not frivolous or vexatious, and has a reasonable prospect of success.
10. I accept that the agreement between the parties sets out a clear payment structure, including the obligation to pay monthly instalments over eight years. The Applicant's contention that the land transfer was accepted as satisfaction of the debt is not supported by the agreement itself, and no valuation or offset clause is specified.
11. Nevertheless, the Applicant maintains that the land was transferred with mutual understanding of its value, and that he had fulfilled his obligations. He relies on a series of instalment receipts to support his claim of overpayment.

12. These arguments, however, must be assessed against the objections raised by both Respondents.

Respondents' Objections

12. Counsel for the 1st Respondent (BIBD) submits that the Trustee acted lawfully under sections 58(1), 60(a), and 43 of the *Bankruptcy Act (Cap. 67)* in selling the property. The property vested in the Official Receiver upon adjudication, and the Applicant has no legal basis to object to the Trustee's exercise of that power.

13. The Applicant's affidavit does not dispute the debt owed to the 1st Respondent, and raises no challenge to the legality of the sale itself. It is therefore argued that the application is misconceived and lacks any merit in relation to the property sale.

14. Counsel for the 2nd Respondent (Abdul Wahab) argues that:

- The Sale and Purchase Agreement provides for total consideration of B\$194,000, including structured monthly payments;
- The Applicant's assertion of a B\$95,000 set-off via land transfer is unsupported and contradicted by the written agreement;
- The 2nd Respondent's proof of debt has already been adjusted to reflect instalments paid (from B\$133,500 to B\$132,250);
- The sale has been concluded, and to disturb it would be inequitable;
- And critically, that the application is out of time.

Out of Time Under Section 98 of the Bankruptcy Act

15. Section 98 of the *Bankruptcy Act (Cap. 67)* provides that:

"Every order and decision of the Registrar ... shall be final unless a notice of appeal is filed within 21 days from the date of the order or decision."

16. The Applicant is effectively seeking to appeal two decisions:

- The Registrar's admission of the 2nd Respondent's proof of debt 21st September 2020
- And, order for sale dated 12th December 2024;

17. In both instances, the Applicant has failed to comply with the 21-days' time limit prescribed under section 98. No application for extension of time has been filed, nor has any explanation for delay been provided.

18. It is clear that where statutory time limits are imposed non-compliance is fatal unless leave to appeal out of time is expressly sought and justified.

Conclusion and Orders

19. The Applicant's complaint relates to a narrow factual disagreement regarding the 2nd Respondent's proof of debt. However, the documentation supports the Respondent's position, and the challenge does not raise any serious or arguable point of law or fact.
20. Further, the application is procedurally defective, being out of time for both the 2024 and earlier orders. No valid reason has been advanced for the delay, and no extension has been applied for.
21. I am therefore satisfied that the application is devoid of merit, both in substance and form. Leave to appeal is refused.
22. Costs of this application are awarded to the Respondents, to be taxed if not agreed.

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