

MASAIROL BIN HAJI MASRI

... Applicant

AND

PERBADANAN TAIB  
DARUSSALAM SERVICES SDN BHD

... Respondents

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**(High Court of Brunei Darussalam)**  
**(Originating Summons No. 30 Of 2025)**

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

**Date of Ruling: 22<sup>nd</sup> October, 2025**

*Headnote: Civil Procedure – Transfer of proceedings – Magistrate’s Court to Intermediate Court – Section 25(3)(g) Subordinate Courts Act – Absence of Rules of Court – Supervisory jurisdiction – Inherent powers – Whether High Court may order transfer – Counterclaim exceeding jurisdictional limit – Distinct causes of action – Application dismissed.*

Ms S. Rozaimarlenny Binti DSLJ Hj Abd Rahman of Messrs HLR Law advocates & Solicitors for the Applicant

Ms Sa’adatun Naadhiyah Binti Mohammad Rosli of Messrs CCW & Partners for the Respondents.

**Issue:**

Whether the High Court has jurisdiction to order a transfer of civil proceedings from the Magistrate’s Court to the Intermediate Court.

**Held:**

1. Section 25(3)(g) of the *Subordinate Courts Act* is not self-executing; no Rules of Court have been made to activate it.
2. Section 20D of the *Supreme Court Act* is supervisory, not a transfer power.
3. Inherent powers cannot be used to create jurisdiction or supply an absent statutory mechanism.
4. The Plaintiffs’ claim and Defendant’s counterclaim are distinct and can proceed separately.
5. The application is procedurally untenable and must be dismissed.

**Result:**

Application dismissed with costs.

**Cases cited:**

*Png Hock Leng v AXA Insurance Pte Ltd* [2022] SGHC(A) 12.

*KPL Mohd Khairul Musadey v Md Hamizan* (COACV No. 5 of 2015)

*Walton v Gardiner* [1993] HCA 77

*Subhashini Malik v S.K. Gandhi* AIR (1972) All 278

*Razuna Sdn. Bhd. (and 2 others) AND IRB Finance* (Civil Appeal No.4 of 2002)

**Statutes:**

Section 25(3)(g) of the Subordinate Courts Act CAP 6.

Section 20D of the Supreme Court Act CAP 5

Order 86, Rule 4 of the Supreme Court Rules

**RULING**

**Muhammed Faisal, J.C;**

**I Introduction and Background**

This is an application by the Defendant, Masairol bin Haji Masri (“*the Applicant*”), seeking an order that the proceedings in MCCS No. 421 of 2024, currently pending before the Magistrate’s Court, be transferred to the Intermediate Court.

The Plaintiffs in the underlying proceedings are Perbadanan Tabung Amanah Islam Brunei (“*the 1st Plaintiff*”) and Darussalam Services Sendirian Berhad (“*the 2nd Plaintiff*”).

The Plaintiffs commenced *MCCS No. 421 of 2024* in the Magistrate’s Court, claiming payment of unpaid maintenance and service charges in respect of several shop units owned by the Applicant at the Airport Mall. The Plaintiffs contend that the Applicant is contractually bound to pay these charges under the relevant maintenance and management agreement.

The Applicant, in his Defence and Counterclaim, denies liability and asserts that the Plaintiffs failed to disclose a valuation report and mismanaged the property, resulting in a depreciation in value of his units and consequent losses. The quantum of the counterclaim, supported by a valuation report exhibited in his affidavit<sup>1</sup>, was said to exceed B\$115,000, thus surpassing the jurisdictional limit of the Magistrate’s Court.

The presiding Magistrate directed that the Defendant file a formal application before the High Court for directions as to whether the proceedings, or any part thereof, may be transferred to the Intermediate Court. Pursuant to that direction, the present Originating Summons was filed.

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<sup>1</sup> See Exhibit “MM-3” Affidavit in Support of Masairol Bin Haji Masri affirmed on 3<sup>rd</sup> March 2025

## II The Application

By this application, the Applicant prays that the whole of the proceedings in *MCCS No. 421 of 2024*, or alternatively his Counterclaim therein, be transferred to the Intermediate Court. He relies on three legal bases:

1. *Section 25(3)(g) of the Subordinate Courts Act<sup>2</sup> CAP 6;*
2. *Section 20D of the Supreme Court Act<sup>3</sup> CAP 5; and*
3. The Court's inherent powers under *Order 86, Rule 4 of the Supreme Court Rules<sup>4</sup>.*

He contends that the counterclaim exceeds the Magistrate's jurisdiction and is closely intertwined with the Plaintiffs' claim; thus, both should be tried together in a court of competent jurisdiction to prevent injustice, duplication, and inconsistent findings.

The Plaintiffs oppose the application on the ground that no such power of transfer exists in Brunei law, either by statute or rule of court, and that the two causes of action are distinct and capable of separate adjudication.

## III Applicant's Submissions

The Applicant began by restating that this application arose from the direction of the presiding Magistrate, who held that the Magistrate's Court lacked power to transfer the case and that the Defendant must seek directions from the Supreme Court.

As earlier stated, the application was grounded on three separate provisions:

1. *Section 25(3)(g) of the Subordinate Courts Act (Cap. 6);*
2. *Section 20D of the Supreme Court Act (Cap. 5); and*
3. The Court's inherent powers under *Order 86, Rule 4 of the Supreme Court Rules.*

It is argued that Section 25(3)(g) reflects the legislature's intent to enable transfer of proceedings between subordinate courts and should not be rendered inoperative merely because no Rules of Court have yet been promulgated. The section, contemplates a "two-way procedural traffic" between courts of coordinate hierarchy, and the Court should, if

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<sup>2</sup> "S.25(1) The Chief Justice may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make Rules of Court regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the Courts of Magistrates in the exercise of their civil jurisdiction.

(2) ...

(3) Without prejudice to the generality of subsections (1) and (2), the power to make Rules of Court shall extend to- (g) prescribing the circumstances and procedure by which proceedings may be transferred from one court to another;" **Section 25(1), Section 25(3) and Section 25(3)(g) of the Subordinate Courts Act CAP 6**

<sup>3</sup> "For the avoidance of doubt and notwithstanding any other written law, in addition to the powers conferred on the High Court by this Act or by any other written law, the High Court shall have general supervisory and revisionary jurisdiction over all Intermediate Courts and Subordinate Courts." **Section 20D(1) of the Supreme Court Act CAP 5**

<sup>4</sup> "For the removal of doubts it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court." **Order 86, Rule 4(1) of the Supreme Court Rules**

necessary, invoke its inherent or supervisory jurisdiction to give practical effect to that intent.

The Applicant contended that the Defendant's counterclaim, valued at over B\$115,000, plainly exceeded the Magistrate's jurisdictional limit. It was therefore in the interests of justice that the case be heard in a court of competent jurisdiction. By splitting the claim and counterclaim between two courts would lead to fragmented litigation, duplication of evidence, and the risk of conflicting findings.

It is submitted further that the claim and counterclaim are factually and legally intertwined; both arise from the same contractual and commercial relationship concerning the Airport Mall shop units, and both turn upon the same factual matrix. This would be the management, valuation, and maintenance of those units. It was also emphasised that trying the claim separately from the counterclaim would compromise judicial efficiency and may prejudice the Applicant's right to have his entire case adjudicated in one forum.

In support, the Appellant relied on several authorities:

- *Png Hock Leng v AXA Insurance Pte Ltd* [2022] SGHC(A) 12<sup>5</sup> — to illustrate that where a counterclaim exceeds jurisdiction, transfer may be justified upon prima facie evidence of its value;
- *KPL Mohd Khairul Musadey v Md Hamizan* (COACV No. 5 of 2015)<sup>6</sup> — for the Court's inherent and supervisory jurisdiction to prevent injustice;
- *Walton v Gardiner* [1993] HCA 77<sup>7</sup> and *Subhashini Malik v S.K. Gandhi AIR* (1972) All 278<sup>8</sup> — for the proposition that superior courts may act to prevent duplicity and inconsistent determinations.

It was argued that these authorities, although from different jurisdictions, are persuasive under the common law tradition and relevant for their underlying principles of fairness and judicial economy.

Taken together, *Sections 25(3)(g)* and *20D*, read with the Court's inherent jurisdiction, empower the Court to order a transfer "*to prevent injustice, even where the legislation is silent.*" The Appellant invited the Court to exercise that power either to transfer the entire case or, in the alternative, at least the counterclaim.

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<sup>5</sup> Applicant's Bundle of Authorities at pp.11

<sup>6</sup> Applicant's Bundle of Authorities at pp.28

<sup>7</sup> Applicant's Bundle of Authorities at pp.96

<sup>8</sup> Applicant's Bundle of Authorities at pp.33

#### IV Respondents' Submissions

They submitted that the central issue before the Court was purely one of jurisdiction — whether such power to transfer exists at all under Brunei law. The Respondents' position was an unequivocal no.

It is contended that *Section 25(3)(g) of the Subordinate Courts Act* is merely an enabling provision that authorises the Chief Justice, with His Majesty's approval, to make Rules of Court for transfers, but it does not itself confer any operative power. Since no such Rules have ever been made, no current mechanism or jurisdiction exists to order a transfer from the Magistrate's Court to the Intermediate Court.

On *Section 20D of the Supreme Court Act*, it is submitted that the High Court's supervisory and revisionary jurisdiction is limited to correcting illegality or procedural irregularity in subordinate court proceedings, not to relocating or redistributing them. A counterclaim exceeding the Magistrate's pecuniary limit, is not an illegality; it is simply a matter that may be pursued separately before a competent court.

As to *Order 86, Rule 4*, the Respondent accepts that the Court possesses inherent powers but argues that these are preservative, not creative. They cannot be invoked to manufacture a new jurisdictional power which the legislature has not granted.

Turning to the authorities cited by the Applicant, counsel for the Respondent distinguished each:

- *Png Hock Leng* relied on specific Singaporean statutory provisions which are absent in Brunei law;
- *Walton v Gardiner* involved a tribunal's abuse of process, not inter-court transfer; and
- *Subhashini Malik* was based on Indian legislative provisions concerning pecuniary jurisdiction, again not applicable locally.

The Respondent further submitted that the Plaintiffs' claim and the Defendant's counterclaim are distinct in law and fact. The claim concerns a straightforward recovery of maintenance charges, while the counterclaim raises issues of damages for alleged mismanagement and non-disclosure. Although they may share a factual background, their legal ingredients, evidence, and remedies are separate. There is thus no risk of inconsistent findings even if heard by different courts.

It is added that the absence of transfer power does not produce injustice; rather, it preserves the statutory jurisdictional structure intended by the Legislature. The remains free to file a separate claim before the Intermediate Court if he so chooses.

## **V Summary of Issues for Determination**

The following issues arise for determination:

1. Whether this Court has the power or jurisdiction to order that proceedings commenced in the Magistrate's Court be transferred to the Intermediate Court.
2. Whether *Section 25(3)(g) of the Subordinate Courts Act* is self-executing or merely an enabling provision pending Rules of Court.
3. Whether *Section 20D of the Supreme Court Act* confers a supervisory power that includes ordering transfer of proceedings.
4. Whether the Court's inherent powers under *Order 86, Rule 4* can be used to supply jurisdiction where none exists by statute.
5. Whether the claim and counterclaim are so connected in fact and law that justice requires they be heard together.
6. Whether, in the absence of express authority, the application is procedurally untenable.

## **VI Findings and Analysis**

### **(1) Section 25(3)(g) of the Subordinate Courts Act**

Section 25(3)(g) empowers the Chief Justice, with the approval of His Majesty in Council, to make Rules of Court "*prescribing the procedure in respect of the transfer of proceedings between the courts.*" The wording of this provision is clearly enabling; it contemplates rule-making but does not itself create an operative power of transfer.

It is undisputed that no Rules of Court have been made under this provision. In the absence of such Rules, no mechanism exists for transferring civil proceedings between the Magistrate's and Intermediate Courts.

Accordingly, the Court finds that Section 25(3)(g) does not confer any present power to order a transfer. It remains a dormant legislative provision awaiting procedural implementation.

### **(2) Section 20D of the Supreme Court Act**

Section 20D vests in the High Court a supervisory and revisionary jurisdiction over subordinate courts. This jurisdiction enables the Court to review proceedings for illegality, procedural irregularity, or excess of jurisdiction.

A transfer of proceedings is not supervisory in nature. It is not a corrective act but a procedural relocation of jurisdiction. The supervisory power is reactive, allowing review or correction, but not the creation of new procedural routes.

Therefore, Section 20D cannot be read as authorising the High Court to transfer a proceeding from the Magistrate's Court to the Intermediate Court. It serves to oversee legality, not to reallocate jurisdiction.

### **(3) Inherent Powers (Order 86, Rule 4)**

The Court acknowledges its inherent powers to prevent injustice and abuse of process. However, inherent powers are preservative, not legislative. They exist to secure the proper administration of justice within existing jurisdictional boundaries.

As held in *KPL Mohd Khairul Musadey v Md Hamizan* (COACV No. 5 of 2015)<sup>9</sup>, such powers must be used sparingly and with caution and cannot be exercised to create new jurisdiction. Thus this case is of no help to the Applicant, except to merely acknowledge the powers this court has under Order 86 rule 4.

Briefly, I refer to the High Court case of *Razuna Sdn. Bhd. (and 2 others) AND IRB Finance* (Civil Appeal No.4 of 2002)<sup>10</sup>. The appellant was successful in overturning the Magistrate order in striking out pleadings. What is relevant to this case is the comment by Leonard, J.C with regards to the Magistrate Courts, in which he stated "*...the Magistrate's Court, as a creature of statute has no power that is not conferred upon it by statute. It has no inherent jurisdiction.*"<sup>11</sup>

As such, the absence of statutory provision for transfer is a legislative omission, not a procedural gap. The remedy lies with the rule-making authority, not judicial creation. Hence, the Court declines to invoke its inherent powers to achieve what the legislature has not provided.

### **(4) Relationship Between Claim and Counterclaim**

While both the Plaintiffs' claim and the Defendant's counterclaim arise from the same commercial relationship, they involve different causes of action. The Plaintiffs' claim is one of contractual debt, while the Defendant's counterclaim concerns damages for mismanagement and non-disclosure.

Though sharing background facts, the two matters require distinct evidence and legal determination. The risk of inconsistent findings is minimal, and such risk cannot justify a transfer that has no basis in law.

### **(5) Procedural and Practical Consequences**

Having considered the matter above, the application is procedurally untenable. The Magistrate's Court retains jurisdiction only to the extent of its prescribed monetary limit. Should the Defendant wish to pursue a claim beyond that limit, he may do so by filing a

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<sup>9</sup> Supra, at n.6

<sup>10</sup> *Razuna Sdn. Bhd., Chian Tau Hup, Tan Siak Keng AND IRB Finance Berhad* [2003] BLR 57

<sup>11</sup> Id, at pp.58 [B]

separate action in the appropriate court. The absence of a transfer mechanism does not amount to an injustice capable of judicial correction through inherent powers.

## **VII Decision and Orders**

For the reasons stated, this Court finds no legal or procedural basis to order that *MCCS No. 421 of 2024* be transferred from the Magistrate's Court to the Intermediate Court.

Accordingly:

1. The application is dismissed.
2. Costs are awarded to the Plaintiffs/Respondents, to be taxed if not agreed.

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