

**Mohamad Yunus bin Awang Mohamad
Nur Najihah binti Adi
Nur Tsamara Uzma Athifa binti Mohamad Yunus**

... Plaintiffs/Respondents

AND

Yunus bin Inchut

... Defendant/Appellant

**(Intermediate Court of Brunei Darussalam)
(Civil Suit No.21 of 2025)**

APPEAL AGAINST REGISTRAR'S ORDER

Pg Hjh Norismayanti binti Pg Hj Ismail, Judge.

Date of Judgment: 19th May 2026

*Headnote: Civil Procedure – Joinder of parties — Application for leave to add registered owner of motor vehicle as defendant — Whether conditions for joinder under Order 15 rule 4 satisfied — Whether common question of law or fact exists — Whether rights to relief arise out of same transaction — Amendment of pleadings — Application for leave to amend Writ of Summons and Statement of Claim — Whether amendment bona fide — Whether prejudice caused to opposing party — Whether amendment alters character of suit — Rules of the Supreme Court 1990, Order 15 rule. 4; Order 20 rules 5 & 8
Evidence — Admissions on pleadings — Whether assertion of fact in a pleading constitutes evidence-Admission by Defendant in Defence of registered ownership of vehicle — No evidence adduced to contradict admission — Whether Court entitled to accept assertion as truth of fact at interlocutory stage — Road Traffic — Negligence — Registered owner of motor vehicle — Statutory liability of owner for negligent driving — Section 86 of the Road Traffic Act (Cap. 68).*

Awg Ahmad Tarmizi Bin Hj Awg Jokeple (Messrs. Fortis Law) for the Plaintiffs/Respondents.
Wynona Agnes Sin Mei Lungga (Messrs. Melissa Ang & Co.) for the Defendant/Appellant.

Cases cited:

Evans v. Bartlam [1937] AC 473

Overseas Investment Pte Ltd v Anthony William O'Brien & Anor [1988] 3 MLJ 332;

Rahmah Bte Hj Abd Hamid & 4 Ors v Ak Md Ali Indra Putra [2000] JCBD 264; *Stroud v Lawson* (1898) 2 QB 44;

Yamaha Motor Co. Ltd v Yamaha Malaysia Sdn Bhd & Ors (1983) CLJ (Rep) 429-430;

Ketteman v Hansel Properties Ltd [1988] 1 All ER.

JUDGMENT

Pg Hajah Norismayanti, Judge:

Introduction:

1. This is the Plaintiffs' appeal against the decision of the Learned Registrar dated 21st February 2026, dismissing the Plaintiffs' application in Summons-in-Chambers No. 91 of 2025 ("the Summons") for leave to add Siti Nurhasibah Binti Hj Md Kanderishah ("Siti") as the 2nd Defendant in this action, and for consequential amendments to the Writ of Summons and Statement of Claim.
2. The appeal is brought by way of Notice of Appeal dated 24th February 2026 and subsequently amended via Summons-in-Chambers No. 23 of 2026 on the 12th May 2026 before this Court.
3. The appeal before this Court is by way of rehearing and this Court is not bound by the decision of the Learned Registrar below. As it was held in *Evans v. Bartlam* [1937] AC 473, the judge in chambers is given full discretion to determine the rights of the parties unfettered by the previous exercise of the Registrar's discretion.

Background:

4. This appeal arises from a road traffic accident that occurred on about on 1st July 2023 at approximately 2130 hours involving the Plaintiffs and a motor vehicle, BAQ 2532, driven by the Defendant, Yunus bin Inchut. The Plaintiffs commenced this action against the Defendant in negligence for the manner in which he drove and managed the said vehicle.
5. The Writ of Summons and Statement of Claim was filed on 23rd June 2025 and served on the Defendant's solicitors on 14th July 2025. The Defence was subsequently filed on 4th August 2025, and it was through the Defence that the Plaintiffs first came to learn that the registered owner of BAQ 2532 at the material time was one Siti Nurhasibah Binti Hj Md Kanderishah ("Siti"), a fact not previously within the Plaintiffs' knowledge.
6. Upon this disclosure, the Plaintiffs promptly applied by Summons-in-Chambers on 20th October 2025 for leave to join Siti as the 2nd Defendant and to make consequential amendments to the Writ and Statement of Claim. The Defendant raised no objection to the application at the hearing before the Learned Registrar. Notwithstanding the absence of opposition, the Learned Registrar dismissed the application on 21st February 2026 and ordered costs against the Plaintiffs. The present appeal was filed on 24th February 2026.

Issues for Determination

7. The Court identifies the following as issues for determination:
 - a) Whether there is sufficient evidence to establish that Siti is the registered owner of vehicle BAQ 2532 at the material time;

- b) Whether the conditions for joinder under Order 15 rule 4 of the Rules of the Supreme Court 1990 are satisfied; and
- c) Whether the proposed amendment to the Writ of Summons and Statement of Claim ought to be allowed.

Ownership of the Vehicle: The Finding

- 8. On the first and foundational issue, this Court finds that there is sufficient material before it to support the finding that Siti Nurhasibah Binti Hj Md Kanderishah is the registered owner of vehicle BAQ 2532 at the material time of the accident on 1st July 2023.
- 9. This finding is based on the following considerations:
 - a) The Defendant's own Defence (specifically paragraph no.2), filed on 4th August 2025, states in clear terms that Siti was the registered owner of vehicle BAQ 2532 at the material time. This disclosure was not obtained from a stranger to the case, it came from the Defendant himself, a party directly involved in the accident concerned and with personal knowledge of the ownership of the vehicle he was driving;
 - b) The averment was unqualified and unequivocal. To this Court's knowledge, it has not been withdrawn, varied or contradicted in any subsequent pleading or affidavit; and
 - c) When the matter came before the Learned Registrar, the Defendant offered no opposition, not even to the Plaintiffs' characterisation of Siti as the registered owner of the vehicle. This Court is mindful that what stands before it is an assertion of fact contained in a pleading, and not evidence in the strict sense. A pleading is not, of itself, proof of the facts pleaded. That said, this Court finds guidance in the approach adopted in *Overseas Investment Pte Ltd v Anthony William O'Brien & Anor* [1988] 3 MLJ 332 and *Rahmah Bte Hj Abd Hamid & 4 Ors v Ak Md Ali Indra Putra* [2000] JCB 264, where it was held that where a party puts forward uncontradicted sworn testimony to establish a fact, that evidence ought to be accepted, there being nothing to the contrary. While the present case concerns an averment on the Defendant's own pleadings rather than sworn testimony, this Court considers that a similar approach is warranted. At this interlocutory stage, no evidence has been adduced by any party to disprove or contradict the assertion that Siti was the registered owner of BAQ 2532 at the material time. On a superficial assessment of the matter, which is all that is required at this stage, this Court is prepared to accept that assertion as reflecting the true position of fact.
- 10. On the totality of the material before this Court, and in the absence of any contrary evidence or pleading, this Court is satisfied that Siti was the registered owner of vehicle BAQ 2532 at the time of the accident on 1st July 2023.

Joinder of the Intended 2nd Defendant

11. The principles governing joinder of parties are found in Order 15 rule 4 of the Rules of the Supreme Court (“RSC”), which provides that two or more persons may be joined as defendants where (a) a common question of law or fact would arise in all the actions, and (b) all rights to relief claimed arise out of the same transaction or series of transactions.

12. The Court finds that the Plaintiffs have satisfied both limbs:

a) First limb: Common question of law or fact

The central and overriding question in this action, who bears liability, whether as driver or registered owner, for the negligent use of vehicle BAQ 2532 resulting in the accident of 1st July 2023, is a common question that plainly arises as against both the Defendant (driver) and Siti (registered owner). It would be neither efficient nor just to require the Plaintiffs to litigate this question in separate proceedings; and

b) Second limb: Same transaction or series of transactions

The Plaintiffs' claim against both the existing Defendant and Siti arises from one and the same event i.e. the accident on 1st July 2023 involving vehicle BAQ 2532. This is plainly a single transaction [*Stroud v Lawson* (1898) 2 QB 44, page 54 referred].

13. Further, the registered owner of a motor vehicle may bear statutory liability under Section 86 of the Road Traffic Act (Cap. 68), which imposes liability on an owner for injury or damage caused by the negligent driving of the vehicle by any person permitted to drive it. The potential liability of Siti is therefore not speculative; it arises from her position as registered owner as a matter of law.

14. This Court further notes that the Learned Registrar erred in requiring the Plaintiffs to establish ownership with the degree of certainty appropriate to a final determination, rather than applying the correct threshold at the interlocutory joinder stage. The proper question under Order 15 rule 4 is whether there is a common question of law or fact and whether the rights to relief arise out of the same transaction, both of which are plainly satisfied here. Siti will have the full opportunity to enter appearance, file her Defence and contest liability at trial. The Court finds no prejudice is caused by joinder at this stage.

Amendment of the Writ and Statement of Claim

15. Order 20 rule 5 of the RSC provides that the Court may at any stage of the proceedings allow the plaintiff to amend his writ or any party to amend his pleading on such terms as to costs or otherwise as may be just.

16. The principles applicable to amendment applications were laid down in *Yamaha Motor Co. Ltd v Yamaha Malaysia Sdn Bhd & Ors* (1983) CLJ (Rep) 429–430 and confirmed in *Ketteman v Hansel Properties Ltd* [1988] 1 All ER. In *Yamaha*, the Federal Court laid down the applicable principles at pages 429-430 of the judgment as follows:

“The general principle is that the Court will allow such amendments as will cause no injustice to the other parties. Three basic questions should be considered to determine whether injustice would or would not result, (1) whether the application was bona fide; (2) whether prejudice caused to the other side can be compensated by costs and (3) whether the amendments would not in effect turn the suit from one character into a suit of another character and inconsistent character.”

17. In the present case, all three considerations weigh in favour of allowing the amendment:

a) The application *bona fide*

The Plaintiffs acted promptly upon receiving the Defendant's Defence, which for the first time disclosed Siti as the registered owner. The application was filed on 20th October 2025, within approximately two months of the filing of the Defence. The Court finds the Plaintiff's application *bona fide*.

b) Any prejudice is curable by an order as to costs

The Defendant filed no Affidavit in Opposition and adduced no evidence of prejudice. Where no opposition is filed and the Defendant does not depose to any prejudice, the court should accept the Plaintiffs' uncontradicted evidence [*Overseas Investment Pte Ltd v Anthony William O'Brien & Anor* [1988] 3 MLJ 332; *Rahmah Bte Hj Abd Hamid & 4 Ors v Ak Md Ali Indra Putra* [2000] JCB 264 referred].

c) No change in the character of the suit

The proposed amendment does not introduce a new cause of action nor does it change the essential character of the suit. The Plaintiffs continue to pursue a claim in negligence arising from the same accident, the same vehicle and the same alleged negligent driving. The amendment merely ensures that all persons potentially liable arising from that same event are properly before this Court.

18. The Court further observes that refusing joinder would compel the Plaintiffs to commence separate proceedings against Siti, resulting in a multiplicity of actions, unnecessary costs and the risk of inconsistent findings, outcomes which the rules of joinder and amendment are designed to prevent. Justice is best served by all claims arising from the same transaction determined together and at the same time.

Court's Findings

19. For the abovementioned reasons, the Court finds as follows:

- a) On the totality of the material before the Court, and in the absence of any contrary pleading or affidavit, Siti Nurhasibah Binti Hj Md Kanderishah was the registered owner of vehicle BAQ 2532 at the time of the accident on 1st July 2023;
- b) The requirements for joinder under Order 15 rule 4 of the RSC are satisfied, in that there is a common question of law and fact as to who bears responsibility for the negligent use of vehicle BAQ 2532 on the 1st July 2023, and all rights to relief claimed by the Plaintiff arise out of the same transaction; and
- c) The proposed amendments to the Writ of Summons and Statement of Claim are *bona fide*, cause no injustice to the existing Defendant that could not be remedied by an appropriate order for costs, and do not alter the essential character of the action.

20. Accordingly, this Court allows the appeal. The decision of the Learned Registrar dated 21st February 2026 is set aside.

Costs

21. On the question of costs, this Court is mindful that the general rule is that costs follow the event and that the Plaintiffs, having succeeded on this appeal, would ordinarily be entitled to their costs. That said, this Court cannot lose sight of the fact that the Defendant had raised no objection to the application when it came before the Learned Registrar and therefore cannot be said to have caused or contributed to the dismissal of the application or to have necessitated the bringing of this appeal in any direct sense.

22. In those circumstances, it would be somewhat unjust to visit upon the Defendant the full costs consequences that would ordinarily flow from an unsuccessful opposition, when in truth he offered none. Balancing these considerations, this Court orders that the costs of this appeal be borne by the Defendant and taxed if not agreed, reflecting the fact that the Plaintiffs were nonetheless put to the expense of pursuing an appeal that ought not to have been necessary, while the costs of the Summons below shall be costs in the cause, to be dealt with by the trial Judge who will have the benefit of the full picture at the conclusion of the proceedings.

Orders

23. It is hereby ordered that:

- a) The appeal is allowed.
- b) The order of the Learned Registrar in Summons-in-Chambers No. 91 of 2025 dated 21st February 2026 is set aside.

- c) Siti Nurhasibah Binti Hj Md Kanderishah be joined as the 2nd Defendant in this action.
- d) The Plaintiffs have leave to amend the Writ of Summons and Statement of Claim to be filed and served within 14 days of the date of this Order.
- e) The Amended Writ of Summons and Statement of Claim shall be served on the intended 2nd Defendant within 14 days of the date of filing.
- f) Costs of the appeal to the Plaintiffs to be taxed if not agreed and costs of the Summons below shall be costs in the cause.



PG HJH NORISMAYANTI BINTI PG HJ ISMAIL
Judge, Intermediate Court