LAU KOK SENG **Appellant**

AND

LAU LAN HWA **1st Respondent**
LOW KOK LIONG **2nd Respondent**
LAU LAN SIEW **3rd Respondent**

Court of Appeal of Brunei Darussalam
(Civil Appeal No. 2 of 2026)

Before: Steven Chong, C.J., Sir Peter Gross, and Sir Nicholas Blake, JJA.
Date of Hearing: 16th June, 2026
Date of Judgment: 25th June, 2026

Headnote: *Probate and Administration Act s.42 - appeal from dismissal of application to appoint an administrator - necessity and expediency of such an appointment - relevance of previous findings as to conduct of the parties- undertaking given by Respondent not to dissipate assets- whether grounds for challenge to judge's decision - Appeal dismissed with indemnity costs - stay on further action in Probate proceedings until costs paid.*

Mr Abdul Hakim bin Ahmad Zakaria (Ahmad Zakaria & Associates) for the Appellant;
Ms. Veronica Rajakanu and Mr. Pao Jia Wan (V.K. Rajakanu & Associates) for the Respondents.

Cases Cited:
Ngun Tai and other v Fung Ming Ip and others [2016] HKCU 2471;
Tan Boon Thien and Another v Tan Poh Lee and Another (No 2) [2021] 1 CLR 391;
Ward v James [1966] 1 QB 273.

Sir Nicholas Blake, JA.:

Introduction

1. This is an appeal from a decision of Judicial Commissioner Muhammed Faisal sitting in the High Court given on 17th December 2025 dismissing the Appellant's application brought under s.42 of the Probate and Administration Act for the appointment of an administrator *pendente lite* in respect of certain funds said to form part of the estate of the late Che Sung Kiaw who died on 3rd March 2020.

2. The Appellant was the petitioner at first instance and also the Plaintiff in an earlier action. The deceased was his mother. Since the autumn of 2016 he and two of his brothers have been in dispute with his sisters about their administration of the deceased's assets and her testamentary intentions.

3. The present application was made pending the determination of an originating summons issued in 2023 whereby the Appellant petitioned for the grant of probate of a will said to have been made by the deceased on 14th December 2017. leaving her assets to her three sons (Lau Kok Seng, Lau Kok Eng, and himself) and excluding the other four children of the deceased: Low Kok Liong, Lau Lan Hwa, Low Lan Eng and Lau Lan Siew. The 2017 will purportedly revoked a will that made in 2003 that appointed her two daughters Low Lan Eng and Lau Lan Hwa as executors and made provision for all seven of her children.

The background evidence and previous findings

4. There is a background to this application, much of which is set out in an earlier judgment of Judicial Commissioner Woolley given on 31st October 2022 in Civil Suit 103 of 2016.

5. Che Sung Kiaw was the widow of Lau Hong Siong who died as long ago as I September 1985 leaving considerable assets by way of property and bank accounts from his dealings as a businessman. He died intestate but had made various declarations of trust in favour of his wife and children before his death. After his death his property company and related assets were managed for some 30 years by his daughters Lau Lan Hwa (LLH) and Low Lan Eng (LLE) until a disagreement arose that resulted in the first proceedings.

6. From 1985 until her own death in 2020 Che Sung Kiaw's financial affairs were also managed by her daughters LLE and LLH. They further provided considerable day to day care of their mother who resided with her son, the Appellant (LKS).

7. LKS was previously active in instituting Civil Suit 103 of 2016 in which he was the Fourth Plaintiff. CSK was identified as First Plaintiff in that action and the Appellant's brothers Lau Kok Eng (LKE) and Lau Kok Meng (LKM) were the Second and Third Plaintiffs. The two sisters LLH and LLE were named as Defendants in that action.

8. On 11th October 2012 CSK made a statutory declaration when she gave all her money in fixed deposits in Brunei and elsewhere to the daughters LLH and LLE to the exclusion of all others. At paragraph 36 of his judgment Woolley JC regarded this statutory declaration as important evidence supporting the proposition that the Defendants were close to their mother and

> *"...were completely trusted by her and given very wide powers to manage her finances. Indeed her view expressed to them was that they were better financial managers than her sons, who in any event seemed to have taken little part in the family's ... affairs".*

9. This was a significant finding as CSK as first Plaintiff was purportedly alleging fraud and financial impropriety by the defendant daughters in the handling of her affairs. By the time of the hearing of the first proceedings Che Sung Kiaw had died. She had made a statement by affidavit dated 20th March 2017 of some 71 detailed paragraphs that was admitted in evidence albeit not subject to cross-examination. This was treated with particular caution by the judge who said this at paragraphs 10 to 11:

> *"However, in the case of the First Plaintiff, there is a further submission on the part of the Defendants that the evidence is to be largely disregarded as the 1st Plaintiff was at the time suffering from dementia. This is supported not only by the evidence of the Defendants and their witnesses of her condition but a medical report submitted by the Defendants dated 1st November 2016 from a Singapore doctor Dr Francis Ngui stating that the 1st Plaintiff was first seen by him in 2013 with deteriorating dementia probably of the Alzheimer's type and was last seen by him in 2014. In addition to this is a transcription of recordings made of two meetings between the 1st Plaintiff, Low Kok Liong, Lan Lan Siew and the 2nd Defendant in 2016 which indicate that the 1st Plaintiff*

knew nothing of the claims being made by the other Plaintiffs and suggest that she was at least a little confused.

The other Plaintiffs have throughout these proceedings denied that the 1st Plaintiff was suffering from such a disorder, but have failed to produce a report from any doctor to support this and. As she was 90 years of age at the start of this action in 2016 I find it is unlikely that she was not in receipt of some medical care from a doctor who could report on her condition. Further the 3rd Plaintiff in cross examination, when being asked about a letter apparently signed by the 1st Plaintiff and the 2nd Defendant on 28 June 2016, frankly said that she could not have known what she was signing as she had dementia".

10. In the present proceedings the Appellant disputes that his mother was suffering from dementia in 2016 and asserts she had full capacity to make a will in December 2017 that is the foundation of the present claim. He intends to rely on a report of Dr KK Lim made in 2016 who is now deceased. Dr Lim expressed the opinion that CSK was lucid and capable of instructing lawyers to change the will. Another doctor Dr Li Wee Ni examined CSK in Singapore on 4th October 2018 and is available to give evidence in the probate proceedings. Statements from both doctors were in the hands of the Appellant's solicitors in 2022 but were not received in evidence at the trial despite their obvious relevance to the issue and on appeal the Court of Appeal declined to admit them.

11. Sylvester Leong is a chartered accountant and the person who the Appellant seeks to appoint as administrator pending the resolution of the Probate proceedings. He is identified in the papers as a witness to the 2017 will and may thus be a witness for the Appellant in the probate action as to CSK's capacity at that time. He had been called as a witness in the first proceedings where his evidence was heavily relied on by the Appellant to identify a shortfall in the monies administered by the Defendants, but he admitted in cross examination that he had not looked at the all the accounting material in existence, only did random sample checks on rental ledgers and had not taken into account expenses paid out over the whole period.

12. The judge also noted at paragraph 46

    "The other obvious error in his report is that he assumes that all properties the subject of declarations of trust remain beneficially owned by the estate which they clearly do not".

13. The Respondents raised a procedural objection to Mr Leong not having been identified in the application as proposed administrator, that the trial judge rightly did not consider to be a fatal defect. A more substantial point was that Mr Leong's independence and suitability to act as an administrator was called into question by the Respondents although the judge did not consider it necessary to decide this issue when dismissing the application for an appointment.

14. Woolley JC's conclusions in the 2022 claim were as follows: -

"From what I have found above it is clear to me that there is no evidence at all of the misappropriation and embezzlement alleged by the Plaintiffs. All the transactions listed have been adequately explained and recorded and I can find nothing to support the Plaintiff's claims here against the defendants (paragraph 46) ….

I find the claims against the Defendants of breach of fiduciary duty, breach of trust, misappropriation of monetary, embezzlement and forgery are totally unfounded and must be dismissed (paragraph 82)".

15. The Appellant's appeal to the Court of Appeal Civil Appeal No 10 of 2022 was dismissed on 5th December 2023. The Court awarded the Respondents their costs on an indemnity basis, because:

    "First, the Appellants doggedly pursued hopeless and unfounded arguments …standing no realistic prospects of success. Secondly, the Appellants' procedural failures in prosecuting the Appeal resulted in otherwise unnecessary interim hearings."

16. At the conclusion of his judgment at first instance Woolley JC said:

    "I also order that the Mareva injunction against the Defendants be lifted and that all payments into court by the Defendants be paid out to them or their nominees. *In so far as these monies include sums which they held on behalf of the 1st Plaintiff, no doubt these will be dealt with as part of the administration of her estate."*

17. In his written submissions to the High Court in this application, the Appellant relied on this last sentence as indicating that the judge had not decided that *all* the monies paid back to the Defendants belonged to them. However, the judge had criticised Mr Leong for the opposite conclusion that all the monies held by the Defendants belonged to the estate 'which they clearly do not' (see [12] above).

18. Nothing in his judgment suggests that the judge had any doubts as to the validity of the 2012 declaration of trust in favour of daughters who had long administered her properties and who she trusted. If the entirety of the funds that the Defendants paid into court pending the resolution of the first proceedings and were returned to them with the discharge of the Mareva were the subject of the declaration of trust then they do not belong to CSK's estate and do not fall to be transferred to an administrator pending the outcome of the probate action. Indeed, it would appear that there is no estate left to administer.

19. The Appellant also relies on the fact that in various parts of their statements in the previous action the Defendant's sisters had made references to 'mother's monies' but the Respondents point put these are not terms of legal significance and throw no doubt on Woolley JC's findings that CSK had made a valid declaration of trust in favour of her two daughters who had assisted her or that the beneficiaries of such a declaration doubted that they were beneficially entitled to the proceeds that had come from their mother.

20. The Respondents observe that the Appellant owes them a considerable sum by way of costs.: of the first action and appeal and the hearing below in the present application. These sums have not been paid.

21. Despite their primary contention that the Appellant's application was an abuse of process, constituted a barely disguised attempt to reimpose the freezing order first made against them in 2017 and was an attempt with no proper evidential foundation to relitigate matters already decided against him they nevertheless gave a written undertaking on 25th March 2025 not to dispose of the monies that had been returned to them with the discharge of the Mareva injunction

22. With this factual background Faisal JC decided that the power to appoint an administrator required justification and must be shown to be necessary and expedient. Here there was no justification for such a course in substance because: -

    i) The assets in contention were all in bank accounts and did not require active administration.
    ii) There was no evidence of mismanagement or the assets being in peril.
    iii) There was no real risk of dissipation or suspicious activity.
    iv) The undertaking was of critical importance, there was no suggestion that it had been breached or departed from.
    v) Courts must balance protection of assets against unnecessary interference and expense and on the present facts making an appointment would be unnecessary and excessive.
    vi) The Appellant had not demonstrated necessity and expediency as required under the authorities relating to s. 42 Probate and Administration Act.

23. In his written submissions in support of this appeal the Appellant contends:

    i) There remains an unresolved dispute about the validity of the 2017 will and whether some of the money in the bank accounts controlled by the Respondents belongs to the deceased's estate.
    ii) Since the monies were returned to them the Respondents have declined to reveal in which accounts the monies are held.
    iii) It is more appropriate that the funds are administered by an independent person rather than a party to the proceedings.

24. In his oral submissions Mr Hakim could not point to any flaw in the judge's reasoning other than he gave too much weight to the undertaking.

<u>Discussion</u>

25. The power to appoint an administrator *pendente lite* or pending suit is a broad one, but a wide survey of authority from England and Wales, Hong Kong, Singapore and Malaysia all indicate that there must be some proper purpose to be achieved by such an appointment depending on the factual circumstances of the case. In the case of *Mak Ngun Tai and other*

v Fung Ming Ip and others [2016] HKCU 2471 Recorder Lisa Wong SC sitting in the Hong Kong Court of First Instance summarised those principles as follows:

i) The court does not automatically appoint an administrator *pendente lite* whenever there is a pending probate dispute.
ii) The court only appoints an administrator *pendente lite* when it is necessary of expedient to do so.
iii) Necessity or expediency has to be assessed with reference to the actual circumstances of the case which obviously vary from case to case so that the situations in which the court would appoint an administrator *pendente lite* cannot be stated exhaustively.
iv) Relevant considerations would include the condition of the estate, the nature of the assets compromised in the estate, whether there is a likelihood of dissipation or jeopardy of assets and whether there is a need to collect the 'fruits of the estate'.
v) An appointment would be necessary or expedient if for example, it is required to protect the estate by managing or safeguarding the assets or to enable legal action to be taken against third parties pending the resolution of the probate dispute.

26. We agree with this summary of the case law and consider it appropriate guidance to be considered by judicial decision makers in Brunei Darussalam. We would add that evidence of undue influence on the testator by one of the parties may also be relevant.

27. Here there is no need to gather in the assets or take legal action against third parties. Equally the judge was right to conclude that there was no real risk of dissipation of assets on the facts of this case. On the findings of Woolley JC, the two defendants had conscientiously managed the family assets for some 30 years from the death of the father in 1985 until the dispute arose between siblings in 2016. The defendants have fully complied with the orders of the court since then, and have given undertakings not to dissipate funds pending further order of the court. The judge attached weight to the undertaking as he was entitled to.

28. Where a judge has considered all relevant matters and properly directed himself as to the principles behind the exercise of the power of appointment it is not the function of this Court to determine the matter afresh for itself. See the decision of the Court of Appeal of Malaysia in *Tan Boon Thien and Another v Tan Poh Lee and Another* (No 2) [2021] 1 CLR 391 at 408 following the approach of the English Court of Appeal in *Ward v James* [1966] 1 QB 273.

Conclusion

29. The existence of a dispute between beneficiaries as to what the assets of the estate are is not itself a sufficient reason to appoint an administrator *pendente lite.* Here the dispute has largely been generated by the Appellant himself whose allegations were found to be wholly unsupported by evidence in 2022. It is sufficient to dispose of this appeal to conclude that the judge did not misdirect himself and was fully entitled to reach the conclusions that he did.

30. Further, it is surprising that the Appellant seeks the appointment of Sylvester Leong as administrator given that he gave contentious evidence on behalf of the Appellant in Civil Suit 103 of 2016 that was not accepted by the judge and that he is a witness to the will signed by CSK in December 2017 who was found by Woolley JC to be mentally incapable of independent decision making by then. In our view he is not an independent person neutral in any dispute between beneficiaries.

31. We dismiss this appeal as having no proper foundation.

32. We invited submissions on why any costs awarded against him should not be on an indemnity basis. Mr Hakim was unable to assist other than to say that his client's case was that the estate should bear the costs. We direct the Appellant to pay the costs on an indemnity basis. There was never a proper factual foundation to meet the test of necessity. The judge properly directed himself as to the test and relevant issues. The appeal has been advanced before us with no proper basis for disturbing the judgement below. Once again, the Appellant has pursued hopeless arguments at the expense of the Respondents.

33. The dispute between siblings has now lasted for some 10 years and has resulted in two claims by the Appellant that have been wholly unsuccessful at first instance and appeal. He has failed to pay the costs awarded by trial judges and this Court and has put his siblings to considerable expense in defending and responding to his claims. We again raised with Mr Hakim the issue of a stay of the probate action pending payment of costs. Although we are not dealing with the substantive dispute today, in our judgment in all the circumstances of the history to date, there should be a stay on further proceedings in that claim unless and until Appellant has paid the costs of both Civil Suit 103 of 2016 and this application

DATO SERI PADUKA STEVEN CHONG, C.J.

SIR PETER GROSS, J.A. **SIR NICHOLAS BLAKE, J.A.**