

In The Matter of The Estate of Che Sung Kiaw

AND

**In The Matter of Section 42 of
The Probate and Administration Act (CAP.11)**

BETWEEN

LAU KOK SENG

... Petitioner

AND

**LAU LAN HWA
LOW KOK LIONG
LAU LAN SIEW**

**... 1st Respondent
... 2nd Respondent
... 3rd Respondent**

**(High Court of Brunei Darussalam)
(Petition No. 19 Of 2025)**

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

Ruling Date: 17th December 2025

Headnote - Probate & Administration — Section 42 Probate and Administration Act — Administrator pendente lite — Interim preservation — Threshold of necessity or expediency — Undertaking — Risk of dissipation — Bank deposits — Procedural deficiencies — Neutrality of nominee — Proportionality — No evidence of mismanagement or dissipation — Undertaking sufficient protection — Application dismissed.

Ms Veronica K Rajakanu of Messrs V. K. Rajakanu & Associates for the Petitioner.
Mr Muhammad Rusyiddin Bin Bagol of Messrs Ahmad Zakaria & Associates for the Respondents.

Statute:

section 42 of the Probate and Administration Act (Cap. 11)

RULING

Muhammed Faisal, J.C.:

I Introduction

1. This is a petition brought under *section 42 of the Probate and Administration Act (Cap. 11)* (“PAA”) for the appointment of an administrator pendente lite (“APL”) in respect

of certain funds said to form part of the movable estate of the late Che Sung Kiaw (“the Deceased”).

2. The petition is made pending the determination of Originating Summons No. 13 of 2023 (“OS/13”), in which the Petitioner seeks, inter alia, a grant of probate of an alleged will dated 2017 and a determination of the ownership of several bank accounts containing approximately B\$3.17 million.
3. The matter was heard on 26 November 2025. This is my decision.

II Background

4. The Deceased passed away on 3 March 2020. The 1st Respondent, Lau Lan Hwa, is one of his daughters. The Petitioner, Lau Kok Seng, is his son.
5. The family has been embroiled in litigation concerning the Deceased’s assets for some years. Of relevance is HCCS No. 103 of 2016, which concerned the ownership of certain funds held jointly by the 1st Respondent and her sister. In that case, after a full trial, the High Court accepted the explanation contained in a 2012 Statutory Declaration, namely that the Deceased had gifted substantial monies to the two sisters. The Court of Appeal upheld that finding.
6. Following the Deceased’s passing, further disputes arose, culminating in OS/13. One of the matters to be resolved in OS/13 is whether the remaining funds in several bank accounts constitute estate property or whether they belong to the Respondents by virtue of joint survivorship or a lifetime gift
7. Pending determination of OS/13, the Petitioner seeks the appointment of an administrator pendente lite to take custody and control of the disputed monies.

III The Present Application

8. The Petitioner initially applied for “*a fit and proper person*” to be appointed as APL. In submissions, he proposed Mr. Sylvester Leong, a public accountant. No affidavit of consent or fitness was filed, though the Petitioner indicated willingness to rectify any procedural deficiencies.
9. The Respondents oppose the application and contend, amongst others, that:
 - the petition is procedurally deficient;
 - it is a thinly veiled attempt to re-litigate matters determined in HCCS 103 of 2016;
 - there is no real risk of dissipation of any assets; and
 - an undertaking already preserves the status quo.
10. On 26 March 2025, counsel for the Respondents provided a written undertaking by the Respondent not to deal with or dissipate the funds pending the disposal of OS/13. That undertaking remains in force.

IV The Petitioner's Position

11. The Petitioner's arguments may be summarised as follows:
 - (a) There exist bank accounts containing approximately B\$3.17 million which properly form part of the Deceased's estate.
 - (b) The 1st Respondent claims personal ownership of these monies, raising concern that she may deal with them before OS/13 is resolved.
 - (c) The Respondents have refused to disclose account numbers or statements, which is said to heighten the risk of dissipation.
 - (d) The solicitor's undertaking is insufficient because it is not personally signed by the Respondent and does not bar the opening of new accounts or internal transfers.
 - (e) Given the magnitude of the sums, a neutral custodian—preferably Mr. Leong—should be appointed to hold the monies until determination of OS/13.

V The Respondents' Position

12. The Respondents resist the application, submitting that:
 - (a) The petition is procedurally defective, as no proposed administrator was named in the petition and no affidavit of fitness or consent was filed.
 - (b) In substance, the application is a disguised freezing order intended to reverse the outcome of HCCS 103 of 2016, and thus an abuse of process.
 - (c) There is no evidence of any dissipation or intention to dissipate. The funds have remained untouched.
 - (d) The undertaking fully preserves the status quo and provides legally enforceable protection.
 - (e) The proposed nominee, Mr. Leong, is not neutral: he acted as the Petitioner's expert accountant in HCCS 103 and as an attesting witness to the 2017 Will, making him a material witness in OS/13.
 - (f) The only asset is cash held in bank accounts, which requires no active management. Appointment of an APL would serve no practical purpose and would incur unnecessary cost.

VI Issues

13. The following issues arise for determination:
 - (a) Whether the petition suffers from procedural defects and, if so, whether they are fatal.

- (b) Whether it has been shown to be necessary or expedient within the meaning of s.24 PAA to appoint an administrator pendente lite.
- (c) Whether the existing undertaking sufficient preserves the disputed assets.
- (d) Whether the petition amounts to an abuse of process.
- (e) If an appointment is warranted, whether the proposed nominee is suitable.

VII Discussions

A Procedural Matters

- 14. While there is force in the Respondents' criticism that the petition did not initially name a proposed administrator and was unaccompanied by a consent or affidavit of fitness, I do not consider these omissions to be, in themselves, fatal.
- 15. Brunei's procedural rules do not expressly mandate such documents for a s.42 application, although they are certainly preferred practice. In any event, the Court has a broad discretion, and such defects can be cured by supplemental affidavit. I therefore would not dismiss the petition on this basis alone.

B Legal Threshold Under s.42 — Necessity or Expediency

- 16. Section 42 of the Probate and Administration Act (CAP11) reads:

"42. (1) Pending any action or the appeal from any decision given as a result of any action touching the validity of the will of any deceased person, or for obtaining, recalling or revoking any probate or any grant of administration, the Probate Officer may appoint an administrator of the estate of such deceased person.

(2) The administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such estate.

(3) Every such administrator shall be subject to the immediate control of the Probate Officer and act under his direction."

- 17. The discretion is narrow. The authorities are clear that an APL is not appointed merely because there is a dispute, nor to give one party tactical advantage. What is required is necessity or expediency—typically arising where:
 - estate assets are in peril,
 - there is active mismanagement,
 - there is real risk of dissipation, or
 - the estate requires ongoing administration.
- 18. In this case, the only asset in contention is money held in bank accounts. There is no evidence of withdrawals, transfers, movement between accounts, or any other suspicious activity.

19. The Petitioner relies heavily on the Respondents' refusal to disclose detailed account information. While I accept that full transparency is desirable, non-disclosure alone does not establish a factual basis for concluding that the funds are at risk.
20. Taking into account the factual history, including earlier judicial findings in HCCS 103 of 2016 regarding the 1st Respondent's honesty and diligence with financial records, I am not persuaded that there is any objective indication of risk.

C Effect of the undertaking

21. The undertaking given on 26 March 2025 is of critical importance. This undertaking carries significant weight; breach may attract severe disciplinary consequences.
23. In the present case, the undertaking already restrains the Respondents from dealing with any of the disputed funds pending the resolution of OS/13. There has been no suggestion of breach or deviation from it.
24. During the hearing, the possibility of supplementing the undertaking with a statutory declaration was raised. Counsel for the Respondents expressed willingness to do so. This option, if pursued, would further strengthen the protective position without recourse to the appointment of an APL.
25. In light of the existing undertaking, and the Respondents' willingness to reinforce it, I am satisfied that the disputed monies are adequately protected.

D Proportionality and Practicality

26. Appointment of an APL is an intrusive remedy. It requires:
 - transfer of large sums,
 - administrative costs,
 - reporting obligations, and
 - potential delay.
27. Given that the asset in question is money parked in secure bank accounts and already preserved by undertaking, the appointment of an APL would be disproportionate. The estate does not require active management. No creditor claims, business operations, or time-sensitive matters have been identified.
28. Courts must balance protection of assets against unnecessary interference and expense. On the facts, appointing an APL would be unnecessary and excessive.

E Alleged Abuse of Process

29. The Respondents allege that this petition is a collateral attempt to undermine findings in HCCS 103 of 2016. I stop short of making such a characterisation. It is sufficient to say that, given my findings above, the petition falls short on the merits, and I do not consider it necessary to rule definitively on this allegation.

VIII Conclusion

30. For the reasons stated, I find that the Petitioner has not demonstrated the necessity or expediency required under s.42 of the Probate and Administration Act.
31. The undertaking in force provides adequate protection of the disputed assets pending the determination of OS/13. If required, the Court may direct that it be reinforced by a statutory declaration by the 1st Respondent.
32. In the absence of any evidence of actual or imminent dissipation, and given the passive nature of the assets concerned, the appointment of an administrator pendente lite would be both unnecessary and disproportionate.
33. Accordingly, the petition is dismissed.
34. Cost of this matter to the Respondent, to be taxed, if not agreed.

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