MAHADEER MOHAMED	**1st Applicant/ Plaintiff**
NASREEN JAYA SDN BHD	**2nd Applicant/ Plaintiff**

AND

UBAYATHULLAH HAJA MOHIDEEN	**1st Respondent/ Defendant**
ZAINAH BINTI HAJI MUHAMMAD	**2nd Respondent/ Defendant**
AWGKU MUHAMMAD DINIE HAZWAN BIN PG HJ SAHARI	**3rd Respondent/Defendant**
SRI AZLINA SDN BHD	**4th Respondent/Defendant**
STANDARD CHARTERED BANK	**5th Respondent/Defendant**
GALLANT SDN BHD	**6th Respondent/Defendant**

(BY ORIGINAL PROCEEDINGS)

UBAYATHULLAH HAJA MOHIDEEN	**Plaintiff**

AND

MAHADEER MOHAMED	**1st Defendant**
SYED ISAK MOHAMMAD ALI	**2nd Defendant**

(BY COUNTERCLAIM)

Court of Appeal of Brunei Darussalam
Motion No. 8 of 2025
(High Court Civil Suit 39 of 2021)

Before: Lunn, J.A.
Dates of Hearing: 21 and 23 October, 2026.
Date of Judgment: 2 November, 2026.

Headnote: Application for leave to appeal to Court of Appeal dismissed: Plaintiffs' applications from dismissal by Faisal JC of appeal against decisions of two Senior Registrars: (i) to allow the 1st to 4th Defendants to amend the Defence, including a Counterclaim; and the joinder of another party; and (ii) decision to order parties to file joint expert report. Court applied test in Poonusamy Rajapandian v Hj. Awg Mohd Hussaini PP Hj Awg Ahmed. Filing of expert reports: O. 34A, r, 1(1) and O. 40, r. 1(1)

Mr. On Hung Zheng and Mr. Tang Weng Leong (M/S CCW and Partnership) for the Applicants/Plaintiffs.
Mr. Anlan Hee Tze Khow (M/S Yusof Halim & Partners) for the 1st to 4th Respondents/Defendants.
Ms. Evelyn Lee Xin Yin (M/S YC Lee and Lee) for the 5th Respondent/Defendant.

The 6th Respondent/Defendant was unrepresented and did not appear.

Cases cited:

Poonusamy Rajapandian v Hj. Awg Mohd Hussaini PP Hj Awg Ahmed (COACV No. 6 of 2015).

Rahman Rahimin Bin Pg Mahali v Rizan Bin Hj Awg Hamid (COACV No. 3 of 2008).

Lunn, J.A.:

1. This is an application for leave to be granted, pursuant to section 20(2)(f) of the Supreme Court Act, Cap. 5, to the 1st and 2nd Plaintiffs and 2nd Defendant by way of Counterclaim (the "Intended Appellants") to appeal to the Court of Appeal against the Orders of Muhammed Faisal Bin PDLJ DSP KOL (B) Haji Kefi JC, dated 18 August 2025, dismissing the intended appeal, against:[1]

(i) the decision of Senior Registrar, Kamaliah Fadhilah, dated 10 December 2024, granting leave to the 1st, 2nd, 3rd and 4th Defendants to amend their Defence, dated 12 July 2022, to include the 1st Defendant's Counterclaim for unjust enrichment by mistake and fraudulent misrepresentation;

(ii) the decision of Senior Registrar Noor Amalina, dated 16 April 2025, to appoint a joint handwriting expert for all parties in the action.

2. Further, if leave to appeal to the Court of Appeal is granted, the Intended Appellants state that they seek an Order of the Court of Appeal that the decision of Woolley JC, dated 8 November 2025, dismissing an application for leave to appeal against the Orders of Faisal JC, be set aside and that costs be paid to the Intended Appellants in the Court of Appeal and below.

3. The Amended Writ and Amended Statement of Claim were filed on 18 June 2021.[2] There is no dispute that they were served on the 1st-4 Defendants on 28 June 2021.

The Plaintiffs' Submissions

4. Broadly speaking, the Plaintiffs' arguments advanced before me were those that had been made in the application to Faisal JC, to quash the Orders made by the two respective Senior Registrars. In a considered Ruling, in which he addressed *seriatim* the various heads of argument advanced on behalf of the Plaintiffs, Faisal JC dismissed both appeals.[3] Of the application in relation to the Orders of Senior Registrar Kamaliah he said, "*I therefore uphold the Registrar's order allowing the amendment and third-party joinder*." Of the Orders made by Senior Registrar Noor Amalina, having said that, "…*she acted within the scope of her powers*" and having determined, "I *therefore find no basis to interfere with the Registrar's exercise of discretion on this issue*", Faisal JC concluded, "*I therefore uphold the Registrar's decision*."

5. Similarly, in the application for leave to appeal to this Court made to Woolley JC, the nub of the arguments advanced by the Plaintiffs were those advanced before this Court, save in one respect: Mr. Zheng advanced arguments before this Court that were not advanced before Woolley JC, namely his submission that, in his Ruling, Faisal JC had attributed to the Plaintiff

[1] Notice of Motion, paragraph 1.
[2] Appeal Bundle, pages 1-19.
[3] Appeal Bundle, pages 86-96.

several arguments that had not in fact been advanced by the Plaintiffs. He explained that this submission had not been made to Woolley JC because it had been thought that the grounds advanced before Woolley JC were sufficient. For example, although the Judge wrongly attributed the arguments to the Plaintiffs, the Plaintiffs had not submitted that: [4]

- the amendments to the Defence were "*excessive*";
- the proposed amendments introduce an entirely new cause of action at a late stage;
- there were inconsistencies between the original Defence and the proposed amendments;
- the inclusion of Syed Isak as a Third Party unnecessarily complicated proceedings.

It is to be noted that those statements were made in the Judge's narrative description of the position taken by the respective parties in submissions.

6. Of the statements made by Faisal JC under the rubric,' Findings', in which the Judge again referred to "*the issue of inconsistency*" and determined that "*the amendment here builds on, rather than negates, prior allegations*",[5] Mr. Zheng reiterated his submission that no submission had been made that the amendments were inconsistent.

7. In reply, Mr. Anlan accepted that some of the Plaintiffs' submissions had been incorrectly described by the Judge in his Ruling, but he suggested that those errors were of no consequence.

8. Whilst in his written and oral submissions to Faisal JC, Mr. Zheng did not use the word, *"inconsistencies"*, to describe differences between the Defence of the 1st-4th Defendants filed on 12 July 2022 and the Amended Defence and Counterclaim, nevertheless, in his oral submissions he invited the Judge to note that the, "*Defence filed on 12 July 2022 is merely a Defence to the Plaintiff's claim and there was no Counterclaim or no relief sought against the Plaintiffs or Sheikh Isak*."[6]

9. It is to be noted that in the Defence[7], filed on 12 July 2022, paragraph 1 of the Amended Statement of Claim was denied, namely the averments that the 1st Plaintiff and Syed Isak are and were the owners and shareholders of the 2nd Plaintiff since 28 August 2014. Rather, it was asserted that at all material times the 1st Defendant had been the sole beneficial owner of the 2nd Plaintiff and, having bought the shares of the 2nd Plaintiff in 2012, in or about August 2014 he had caused the transfer of those shares to the 1st Plaintiff and Syed Isak as his nominees.[8]

10. Mr. Zheng submitted to Faisal JC that, by contrast, the Counterclaim averred that, "*the 1st Defendant had entrusted the 1st Plaintiff and Sheikh Isak to hold the 2nd Plaintiff's shares on his behalf and to act only on his instructions but they acted without authority by removing the 2nd and 3rd Defendants as directors and therefore challenging the 1st Defendant's position as beneficial owners. The 1st Defendant had made payments… under mistaken belief and without consideration resulting in unjust enrichment of the 1st and 2nd Plaintiffs at the expense of the*

[4] Faisal JC, paragraphs 4,6-9.
[5] Appeal Bundle, pages 91-92 at paragraph 22.
[6] Notes of Proceedings, page 4.
[7] Appeal Bundle, pages 41-48.
[8] Appeal Bundle, page 43 at paragraphs 3-5.

1st Defendant. They also claimed in the proposed Counterclaim that the 1st Plaintiff and Sheikh Isak were jointly and severally liable with the 2nd Plaintiff to repay the sum for fraudulently or negligently misrepresenting to the 1st Defendant that he was the sole and ultimate beneficial owner of the 2nd Plaintiff company thereby inducing him to make those payments."[9]

11. In the result, it was submitted that, *"…the original Defence filed by the Defendant did not have any Counterclaim, it was merely a Defence. So with that, the new amendment cannot have arisen out of the same or substantially the same facts to which relief has already been claimed because there was no relief sought in the first place*."[10]

12. No doubt, it was in response to those submissions that Faisal JC said:[11]

> "*The issue of inconsistency must be viewed in context. The mere fact that a party shifts the case due to newly discovered evidence or clarification does not automatically bar amendment. The amendment here builds on, rather than negates, prior allegations.*"

13. With respect, there is no substance in the Plaintiffs' complaint.

Background

14. There is no dispute that the 2nd Plaintiff operated a business selling hardware and household goods from premises in Jalan Madang, Manggis Dua, Brunei Darussalam.

Amended Statement of Claim

15. In the Amended Statement of Claim it was claimed that the 1st Plaintiff is and was a director of the 2nd Plaintiff since 18 August 2014 and that he and Syed Isak, the 2nd Defendant by Counterclaim, were the owners and shareholders of the 2nd Plaintiff.[12] A number of claims were made against the 1st to 4th Defendants, including that, in the absence of the 1st Plaintiff in India, in July 2017 monies had been withdrawn from the bank accounts of the of the 1st and 2nd Plaintiffs by forgery by or on the instructions of the 1st Defendant. Further, it was claimed that, in furtherance of a conspiracy to defraud, of which the 1st to 4th Defendants were parties together with persons unknown, in July 2017, the 1st Defendant or those acting in concert with them had removed and misappropriated from the premises of the 1st Plaintiff documents, cheque-books and cash, together with seizing possession of the Plaintiffs' shop, removing and misappropriating stock, closing the shop and ceasing trading.

16. It was claimed that, on or about 14 March 2019, the 1st, 2nd, 3rd and 6th Defendants and/or acting with others fraudulently forged a letter of resignation of the 1st Plaintiff as a director of the 2nd Plaintiff, prepared a Resolution of the directors of the 2nd Plaintiff, on which was the forged signature of the 1st Plaintiff, accepting the 1st Plaintiffs resignation and appointing the 3rd Defendant as a director of the 2nd Plaintiff. On 17 February 2019, in an attempt to prevent the 1st Plaintiff from returning to Brunei, the 2nd Defendant, in concert with or on the instructions of the 1st Defendant, filed a report to the police accusing the 1st Plaintiff of cheating the 2nd Defendant of her money.

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[9] Notes of Proceedings, page 4.
[10] Notes of Proceedings, page 9.
[11] Appeal Bundle, page 92 at paragraph 22.
[12] Appeal Bundle, page 4 at paragraph 1.

1st-4th Defendants' Defence and Amended Defence and Counterclaim

17. In the Defence of the 1st-4th Defendants, as noted earlier it was claimed that the 1st Defendant is the sole beneficial owner of the 2nd Plaintiff, having bought all of the shares in 2012 of its previous owner, Ezak Abdawood, which shares the 1st Defendant caused to be transferred to the 1st Plaintiff and Syed Isak (the 2nd Defendant by Counterclaim) as his nominees.[13] The impugned cheques drawn on the bank accounts of the 1st and 2nd Plaintiffs were pre-signed by the 1st Plaintiff and provided to Syed Isak to settle the debts of the 2nd Plaintiff.[14]

18. In the Counterclaim, in the Amended Defence and Counterclaim, the sum of BND 313,329.22 was claimed against the 2nd Plaintiff for unjust enrichment on the basis that, if the 1st Defendant was not the beneficial owner of the shares of the 2nd Plaintiff, he had acted on the impression that he was the beneficial owner and had allowed the 2nd Plaintiff to occupy premises, the rent for which he had paid from 14 August 2014 to 30 November 2023.[15] Further, he had made payments in and between 2017 and 2019 to the 2nd Plaintiff's creditors to the benefit of the 2nd Plaintiff. Also, it was claimed that the 1st Plaintiff and 2nd Defendant by Counterclaim were jointly and severally liable with the 2nd Plaintiff to pay the 1st Defendant, in consequence of misrepresenting to the 1st Defendant that he was the sole and ultimate beneficial owner of the 2nd Plaintiff. Further, it was claimed that the 1st Defendant was liable to pay rent for the premises from 30 December 2023 until the termination of the tenancy agreement.

19. In the Prayer for relief in the Counterclaim, in the alternative, the 1st Defendant claimed the sum of BND 313,329.22 against the 1st, 2nd Plaintiffs and 2nd Defendant by Counterclaim, as jointly and severally liable, by:[16]

(i) the 2nd Plaintiff by unjust enrichment; and

(ii) the 1st Plaintiff and 2nd Defendant by Counterclaim, by fraudulent misrepresentation.

In addition, the 1st Defendant sought similar relief, distinguishing the relief sought on the same basis, in respect of the claim for rental payments incurred from 1 December 2023 until the termination of the tenancy.

The principles and approach to the granting of leave

20. In the Judgment of Mortimer, P. in *Poonusamy Rajapandian v Hj. Awg Mohd Hussaini PP Hj Awg Ahmed* [17]this Court cited with approval *dicta* in the Judgment of the Court in *Ak Abdul Rahman Rahimin Bin Pg Mahali v Rizan Bin Hj Awg Hamid* [18] in respect of the approach to be taken in an application for leave to appeal in an interlocutory matter:

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[13] Appeal Bundle, page 42 at paragraphs 3-5.
[14]Appeal Bundle, page 44 at paragraph 15.
[15] Appeal Bundle, page 283 at paragraph 46.
[16] Appeal Bundle, page 286.
[17] *Poonusamy Rajapandian v Hj. Awg Mohd Hussaini PP Hj Awg Ahmed* -unreported (COACV No. 6 of 2015) 21 November 2015.
[18] *Rahman Rahimin Bin Pg Mahali v Rizan Bin Hj Awg Hamid* -unreported (COACV No. 3 of 2008) 17 May 2008.

> *"Interlocutory applications are rightly described as "satellite litigation". In other words the hearing is not designed to decide the real issues between the parties, only subsidiary ones. Whether justified or not, they cause delay in the final resolution of the dispute. Judges are recognised as being better, more experienced and more practical tribunals for dealing with appeals on ordinary interlocutory applications. Additional delay in an appeal to this Court on such matters ought not to be entertained save where there is a serious point of principle involved or where a decision on the points would be of general advantage, not usually otherwise. There must always be some good reasons"*

21. Of what constituted "*good reasons*", Mortimer, P. went on to note that in its subsequent Judgment in *Morsima Sdn Bhd v Perbadanan Tabung Amanah Islam Brunei* this Court cited the Judgment of the Chief Justice of Singapore in *Lee Kuan Yew v Lee Liang Hong & Anor* [1997] 3 SLE 489, in which he stated:

> "*Hence, from the cases, it is apparent that there are at least three limbs which can be relied upon when leave to appeal was sought: (1) prima facie case of error; (2) question of general principle decided for the first time; and (3) question of importance upon which further argument and a decision of a higher Tribunal would be to the public advantage."*

22. In the result, Mortimer, P. said:

> "*In summary, it is neither practical nor desirable to further define 'good reasons' as circumstances vary so greatly but leave will not normally be granted to appeal to this court in satellite litigation unless substantial injustice will result from refusing leave, or if the public interest will be served by having the matter decided by this court.*
>
> *There is one further matter. When a judge below has properly exercised his discretion this court will not substitute its own discretion for that of the judge merely because this court may regard the balance is tipped against the way in which he decided the matter. See Birkett v James [1978] 2AC at 317D-G per Lord Diplock*."

1st Defendant's Affidavit-in-Opposition: 31 August 2026

23. Acceding to the submissions of Mr. Zheng, objecting to the evidence on the basis that the Affidavit-in Opposition, filed by the 1st Defendant on 31 August 2026, was controversial fresh evidence in an appeal, so that regard was to be had to the principles in *Ladd v Marshall*, I refused an application by Mr. Anlan that I have regard to paragraph 8 of the Affidavit, in which the 1st Defendant sought to particularise when he had first come to know of the claim to ownership of the shares in the 2nd Plaintiff by the 1st Plaintiff and 2nd Defendant in the Counterclaim, by affirming:

> *"…prior to the service of the Amended Writ and Amended Statement of Claim upon me, I had no knowledge whatsoever of the 1st Plaintiff's and 2nd Defendant by Counterclaim's alleged claim to ownership of the two shares in the 2nd Plaintiff".*

The context of the applications

24. In her Ruling, Senior Registrar Kamaliah set out what she described as the context of the application before her to amend the Defence, to include a Counterclaim and to add a Third-Party, noting that:[19]

> *"…this application follows a trail of determinations that have had to be made on a number of interlocutory matters*:

22nd June 2022	Defendant's application to strike out amended writs were dismissed. The Defendants were accordingly granted leave to enter appearance and file in their defence.
12th October 2022	Application by defendant to strike off the following prayers by Plaintiffs were dismissed. • 1st Plaintiff's defamation claim • Declaration of beneficial ownership However, application to stay action until 2nd Plaintiffs solicitor was to obtain proper authority within two months of the date of the ruling was granted.
31st October 2022	The ruling on 12th October 2022 was appealed by the relevant parties in respect of the defamation, declaration of beneficial ownership and stay of proceeding. The Court ruled to strike out the defamation claim only, with all other appeals dismissed.
24th June 2023	The Plaintiffs' successfully appealed against the decisions on stay of proceedings and defamation claim, to the Court of Appeal. In consequence of which, the stay of the 2nd Plaintiffs action was finally lifted and the defamation claim was reinstated.

> 3. *It is in the context of these determinations that I assess the Defendants' application*."

25. It is to be noted that, following service of the Amended Writ and Amended Statement of Claim on 28 June 2021, the 1st-4th Defendants' application to strike out was dated 5 July 2021. Mr. Anlan informed Faisal JC that, *inter-alia*, issue was taken with the *locus standi* of the 2nd Plaintiff and challenge made to the mandate of the solicitors acting for the 2nd Plaintiff.[20] That matter was resolved by the Judgment of the Court of Appeal, delivered on 24 June 2023,

[19] Appeal Bundle, page 79 at paragraphs 2-3.
[20] Notes of Proceedings, page 13.

ruling against the 1st-4th Defendants.[21] Mr. Anlan reminded Faisal JC that he had granted an interim injunction to bar the shareholders of the 2nd Plaintiff from voting. Subsequently, that injunction had been stayed.[22] On 9 January 2024, the 1st-4th Defendants filed a Summons for leave to amend the Defence, including adding a Counterclaim. Mr. Anlan contended that these were steps taken in litigation to resolve the important issue of who it was who owned the 2nd Plaintiff.

Expert report: Order by Senior Registrar Noor Amalina-16 April 2025

26. The circumstances leading to the making of the Order in respect of the service of expert reports by Senior Registrar Noor Amalina, dated 16 April 2025, were that, first on 22 August 2023, in an Order for Directions, Registrar Mohammad Marzuqi made Orders, including that:[23]

> "*4. An expert report to be agreed if possible, and that, if not, the expert evidence be limited to one expert witness for the Plaintiffs, one expert witness for the 1st to 4th Defendants, one expert witness for the 5th Defendant and one expert witness for the 6th Defendant*."

27. Secondly, on 20 November 2023, the Plaintiffs set the matter down for trial. By letters to the Court, dated 6 September 2024 and 24 October 2024, the Plaintiffs requested that a Pre-Trial Conference ("PTC") be fixed. In consequence, PTCs were held by Senior Registrar Amalina on 10 December 2024, 20 January 2025, 15 March 2025 and 16 April 2025.[24] At the PTC, held on 20 January 2025, the Plaintiffs sought directions from the Senior Registrar as to whether expert reports should be served by the parties simultaneously or sequentially. The parties disagreed. The Plaintiffs sought simultaneous service. At the hearing on 15 March 2025, Senior Registrar Noor Amalina directed that written submissions be filed by the parties addressing the issue. As directed, the respective parties filed their submissions on 29 March 2025. Neither those written submissions nor any Notes of Proceedings of what occurred at any of the PTCs are available to this Court.

A consideration of the submissions

Expert reports

28. As noted earlier, there is a paucity of material before me that is likely relevant to the circumstances in which Senior Registrar Noor Amalina came to make the Order, dated 16 April 2025. At issue was the interplay of Order 40, rule 1(1) and Order 34A, rule 1. The former provided for the appointment of an independent expert witness by the Court, "on the application of any party". That power had been exercised in the directions made by the Court on 22 August 2023. Order 34A, rule 1 states:

> "*Notwithstanding anything in these Rules, the Court may, at any time after the commencement of any proceedings, of its own motion direct the parties to the proceeding to appear before it, in order that the Court may make such order and give*

[21] COACV No. 11 of 2022.
[22] Notes of Proceedings, page 14.
[23] Appeal Bundle, pages 100-101.
[24] 1st Plaintiff's Affidavit, dated 15 November 2025, at paragraphs 10-12.

such directions as it thinks fit and just for the expeditious and economical disposal of the cause or matter."

29. The Plaintiffs submitted that, given there was an existing Order stipulating the provision of expert reports, dated 22 August 2023,[25] Senior Registrar Noor Amalina had no power to order that the parties file a joint expert report or, if she had the power, she had exercised her discretion wrongly. Mr. Zheng submitted that: [26]

"*The words "notwithstanding anything in these Rules" in Order 34, rule 1:*

a) do not override and extend to the Order for Directions which the parties had agreed to;"

30. Further, given that the Plaintiffs had engaged and paid for an expert report prior to the holding of any PTC, the Order was unjust and uneconomic. Notwithstanding that assertion, made good by the provision of the related invoice and receipt,[27] Mr. Zheng was unable to confirm to me whether or not the Senior Registrar had been informed of that fact.

31. Mr. Anlan invited the Court to note that the Order of Senior Registrar Noor Amalina did not appoint a joint expert, rather it directed the parties to attempt to agree the provision of a joint expert report, failing which the Court would exercise its powers to appoint an independent expert. For her part, Ms. Lee submitted that the exercise of the power under Order 34A, rule 1 by the Senior Registrar, in the exercise of wide case-management powers, was not inconsistent with the Order made pursuant to Order 40, rule 1. It did not preclude the Plaintiffs from making a future application under Order 40, rule 1.

32. In his Ruling, Faisal JC found that:[28]

"…the Registrar acted within the scope of her powers. Her reasons-namely to streamline the proceedings, reduce duplication, and ensure that expert evidence does not unnecessarily delay or complicate trial-are entirely proper objectives consistent with the overriding objective of efficient case management. I therefore find no basis to interfere with the Registrar's exercise of discretion on this issue."

33. Woolley JC made a similar determination, namely that the Senior Registrar, "*was exercising her discretion in this matter to make, what in my view is a sensible order well within the powers under this rule, and I see no reason to question the exercise of discretion*."[29]

34. There is no merit in the Plaintiffs' complaint.

Leave to amend

35. As Woolley JC noted in his Decision, the Plaintiffs' principal objections to the determination of Senior Registrar Kamaliah to allow the application of the 1st-4th Defendants to amend the Defence and Counterclaim were that, "*the claims of unjust enrichment by mistaken belief and fraudulent misrepresentation are time-barred*."[30]

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[25] Appeal Bundle, pages 100-101.
[26] Appellants'/Plaintiffs' Submissions,26 August 2026.
[27] Appellants'/ Plaintiffs' Submissions, 26 August 2026, at Schedule 2.
[28] Appeal Bundle, page 96 at paragraph 31.
[29] Appeal Bundle, page 265 at paragraph 12.
[30] Appeal Bundle, page 264 at paragraph 5.

36. In her Ruling, Senior Registrar Kamaliah identified the claims made in the proposed amended pleadings, stipulating what she determined to be the relevant provision in the Limitation Act, Cap. 14 and making findings as to the currency of the limitation period:[31]

> (i) the recovery of trust property: 6 years from the date on which the right of action accrued pursuant to section 27(3)-so that, "*the claim remains current until September 2028*";
>
> (ii) the declaration of beneficial ownership: - "*being equitable rate reliefs they fall under section 48"-so that, the claim was, "not covered by any limitation*.";
>
> (iii) unjust enrichment: "*Claims in unjust enrichment are claims in equity, to which section 48 applies*"-so that, the "*claim…remains current not being covered by any period of limitation*"; and
>
> (iv) fraudulent misrepresentation-section 38-so that, "*the period of limitation only begins to run at the point that the Defendant discovered the fraudulent misrepresentation or could with reasonable diligence discover it*". In applying that approach to the evidence, she determined, that it was "*reasonable that the date of discovery be the date at which the Plaintiffs instituted proceedings seeking a declaration that the 1st Plaintiff and Syed Isak possess ownership of the 2nd Plaintiff Company, i.e., 19 February 2021.*"

Beneficial ownership: the core issues

37. Having said that she found the case of the 1st-4th Defendants, "to be compelling" Senior Registrar Kamaliah said:[32]

> "*The matter of beneficial ownership goes to the core of the issues in disputes between the parties, the claims made and relief sought in the proposed amendment stemmed directly from this issue. This includes the claims in unjust enrichment and fraudulent misrepresentation, which arise out of a belief held by the Defendants of their entitlement in the trust property, i.e., shares in the 2nd Plaintiff company*."

38. In the result, Senior Registrar Kamaliah found that the amendments were, "*necessary to… enable the real questions in controversy between the parties to be decided*."[33] In addition, she found that, "*the timing of these amendments does not cause any prejudice to the Plaintiffs*" and concluded by stating, "*I do not find the Plaintiffs to suffer from any injustice, as they will be compensated by appropriate orders as to costs*."[34]

Leave to add Syed Isak as a party

39. Of the application of the 1st-4th Defendants, pursuant to Order 15, rule 3, to add Syed Isak as a Third-Party, having been informed by Mr. Anlan that the intention of this application was to add him as a party to the Counterclaim, Senior Registrar, Kamaliah allowed the application under Order 15, rule 3, determining that it was "procedurally sound in accordance with Order 15, rule 3", that the Plaintiffs had no *locus standi*, so that there were no cost implications to the Plaintiffs.[35] Of the requirement in Order 15, rule 3 that the relief claimed against Syed Izak

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[31] Appeal Bundle, pages 80-82 at paragraphs 8-21.
[32] Appeal Bundle, page 83 at paragraph 25.
[33] Appeal Bundle, page 83 at paragraph 26.
[34] Appeal Bundle, page 83 at paragraphs 29-30
[35] Appeal Bundle, page 80 at paragraph 5.

be related to or connected with the original subject matter of the action, she said that she was so satisfied. In the result, she directed that references to Syed Izak as Third-Party were to be amended to refer to him otherwise, including Defendant to Counterclaim.[36]

Counterclaims against individual Plaintiffs

40. Senior Registrar Kamaliah said that she agreed with the Plaintiffs' submissions that the particulars of misrepresentation did not disclose any wrongdoing on behalf of the 2nd Plaintiff Company.[37] However, she rejected the Plaintiffs' claim that in consequence the application to amend ought to be disallowed. Rather, she ordered that amendments be made to the Prayers to distinguish the claim in misrepresentation from that made in unjust enrichment, stipulating against whom each claim was made.[38]

41. In consequence, the Senior Registrar made Orders allowing the amendments but, nevertheless determined that, *"…the costs of this application and those consequent to the amendments to the Plaintiffs*". [39]

Faisal JC's Ruling

42. Of the determinations of Senior Registrar Kamaliah, in his Ruling, having noted that the Senior Registrar had "*allowed the amendments and the addition of Syed Isak as Third-party*", Faisal JC said that, *"…she was satisfied that the amendments flowed from issues already raised and did not amount to an abuse of process. Although the changes were substantial, they were not inconsistent with earlier material and could be fairly addressed through an amended Reply*".[40]

43. Mr. Zheng is correct to point out that Syed Isak was added, not as Third-Party, but as the Senior Registrar had stipulated as "*Defendant to Counterclaim*". No doubt, that was a slip by the Judge. Nothing whatsoever turns on the point.

44. Faisal JC went on to observe:[41]

> "*The principles under O. 20 r.5 SCR favour a liberal approach to amendment where it facilitates a just resolution of the real issues. Prejudice, if any, can be addressed by costs or directions for additional pleadings or discovery. There is no evidence of ambush or abuse of process.*
>
> *An amendment should be allowed if it enables the real dispute to be adjudicated upon unless it causes prejudice which cannot be compensated in costs*."

45. Of the Plaintiffs' contention that it was impermissible to allow an amendment of the pleadings to make claims that were time-barred, whilst acknowledging the issue was an important consideration, the judge said:[42]

> "*I am also mindful that the issue of limitation is best determined at trial unless it is plain and obvious that the claim is time-barred. In this case the counterclaim appears to be grounded in factual assertions that have already featured in the original Defence*

[36] Appeal Bundle, page 80 at paragraphs6-7.
[37] Appeal Bundle, page 84 at paragraph 33.
[38] Appeal Bundle, page 84 at paragraph 35.
[39] Appeal Bundle, page 84 at paragraph 39.
[40] Appeal Bundle, pages 91-92 at paragraph 17.
[41] Appeal Bundle, page 92 at paragraph 20.
[42] Appeal Bundle, page 92 at paragraph 23.

> *or related affidavits. The Defendants have raised strong argument that the claims fall within exceptions for equitable categories not subject to limitation. Accordingly, I am not satisfied that the amendment ought to be refused on limitation grounds at this stage*."

Woolley JC

46. In his Decision, dismissing the application for leave to appeal to this Court, Woolley JC dealt with the issues arising from the Plaintiffs' submissions as to when the Defendant's claims arose. He rejected the submission that they arose on the dates payments were made in and between 2012 and 2019 noting, that, *"…the time for such claims to be made only commences when discovery of the mistake or misrepresentation is made*". Then, he said that it was to be inferred that at the time payments were made by the 1st Defendant he had not discovered the mistake or misrepresentation: [43]

> *"…otherwise, as a matter of common sense, no doubt they would not have been made. It follows that the discovery of the mistake or misrepresentation must have been made at a later date. No other date has been put forward by either side to this application, except to the extent that it was suggested in submissions by counsel for the 1st to 4th Defendants that the filing of the statement of claim herein only alerted them then to the allegation that the 1st Defendant was not the beneficial owner of the 2nd Plaintiff, and possible misrepresentation or fraud*."

47. Acknowledging that Mr. Zheng's submission was correct. that there was no affidavit evidence from the 1st-4th Defendants as to when they had knowledge of the mistake or misrepresentation, Woolley J C said, *"…the Court is left with nothing on which to form an opinion as to limitation, and it must be left to the judge at trial, having heard and evaluated the evidence, to rule on the matter. I am unable to say now that this claim is time-barred and it cannot therefore be a reason to disallow the amendments*."[44]

Conclusion

48. In the result, having had regard to all the submissions, I am satisfied that the Plaintiffs have failed to satisfy the threshold test articulated earlier for the grant of leave to appeal to the Court of Appeal against the Orders of Faisal JC, dated 18 August 2025. Accordingly, I dismiss the application.

Costs

49. In their written submissions, the 1st to 4th Defendants and the 5th Defendant asked for an Order of costs in their favour, if the application of the Plaintiffs and 2nd Defendant by way of Counterclaim for leave to appeal to the Court of Appeal was refused. In their brief oral submissions, made at the conclusion of the hearing, they reiterated those submissions, Mr. Anlan adding for the 1st to 4th Defendants that he sought an Order of costs to include the costs in the Court of Appeal for the preparation for the hearing that will not now take place.

50. For his part, Mr. Zheng reserved his position, indicating that, before he made submissions on the issue, he wished to see the grounds on which the refusal of leave to appeal to the Court of Appeal was made.

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[43] Appeal Bundle, page 203 at paragraph 5.
[44] Appeal Bundle, page 203 at paragraph 6.

Directions

51. Accordingly, I direct that the parties are to file with the Court such written submissions as they wish to make on the issue of an Order of costs, limited to 1,000 words, on or before 12:00 p.m. on Thursday, 5 November 2026.



LUNN, J.A.