Ganda Lumban Gaol v Mindo Lumban Gaol and Another
[2001] SGHC 288

Case Number : Suit 780/2000T

Decision Date : 29 September 2001

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Molly Lim SC and Ng Ee San (Wong Tan & Molly Lim) for the plaintiff; Dara Singh (Bogaars & Din) for the defendants

Parties : Ganda Lumban Gaol — Mindo Lumban Gaol; Irene Debora Sariuli

Judgment

1. At the conclusion of this trial, I awarded judgment to the plaintiff on her claim against her brother and niece, the first and second defendants respectively. The first defendant has now appealed against my decision (in Civil Appeal No. 600077 of 2001). He has also filed a separate appeal (in Civil Appeal No. 600078 of 2001) against my dismissal of his application (in summons in chambers no. 1120 of 2001/T) for:

> (i) stay of these proceedings on the ground of *forum non conveniens* based on the fact that the plaintiff's/first defendant's sister [Indiana Lumban Gaol] has proceedings pending in the District Court of Central Jakarta, for determination of inter alia all issues in this suit;
>
> (ii) alternatively, that the action be dismissed on the ground that the plaintiff has no *locus standi*.

The facts

2. The plaintiff and the defendants are members of the Batak ethnic group of Tapanuli in Indonesia and are Christians. Their father Mangara Tua Lumban Gaol died on 8 September 1986 while their mother Dumatiar Sitompul (Sitompul) died on 19 July 1999. The plaintiff is the youngest of the 3 siblings; all the siblings are married, with the plaintiffs sister marrying outside the Batak clan.

3. The plaintiffs parents set up a pharmaceutical business PT Gandha (the business) in Jakarta in 1954. The business grew over the years and expanded to include several outlets as well as a factory which manufactures medicines for sale. Another company PT Indonesian Drug House (the company) was set up in Jakarta in 1955 to distribute the medicines manufactured by the business. After the death of the plaintiffs father, Sitompul headed the business and became the matriarch of the family. She obtained a declaration from the Indonesian courts on 5 November 1986 (see AB14-19) that she and her three (3) children were the heirs of his estate. I will return to this document and its significance later.

4. The plaintiff was appointed a Komisaris of the company in 1987 and of the business in 1995, a position akin to that of a controller; Sitompul was the companys President Director (Direktor Utama). The plaintiffs sister Indiana, a trained pharmacist, is in charge of the production of medicines in the business. The first defendant is also a Komisaris but, according to the plaintiff, he does not do any work for the business nor does he go to the office. The plaintiffs function of Komisaris is that of general manager; she runs the business and the company including managing the staff, supervising the financial and accounting aspects, negotiating business contracts and taking care of administrative

work. When Sitompul was about 70 years of age, she stopped going to the factory and the shop outlets although she continued to make important decisions for the business/company and to give directions. She left the day to day operations to the plaintiff.

5. Upon her death, Sitompul left a large estate which consisted of various landed properties in Indonesia, shares in Indonesian companies, cash in bank accounts maintained with banks in Indonesia and Singapore and of course the business and the company. It was the plaintiffs contention that Sitompul died intestate whereas the first defendant contended she left a will.

6. The subject of these proceedings are three (3) Asian Currency unit accounts which Sitompul had opened with banks in Singapore; these are:-

i. a joint account in her and the first defendants name with Bank of America no. 30292-01 (the first BOA account) containing about US$400,000;
ii. a joint account in her and the plaintiffs name with Bank of America no. 30293-01 (the second BOA account) which contained about US$200,000;
iii. a joint account in her name and the names of the plaintiff and the second defendant with Citibank (the Citibank account) which account contained about US$1m at the material time and now has a balance of about US$300,000.

7. According to the plaintiff, the Citibank account was opened on 30 December 1997 initially in the names of Sitompul and herself only. The mandate required for withdrawal was either partys signature. Although Sitompul had informed the plaintiff that upon her death, the plaintiff could withdraw the money in the Citibank account, the latter considered the money to be the mothers as Sitompul had put in all the monies; hence the plaintiff regarded the monies in the Citibank account as belonging to the estate of Sitompul.

8. The second defendant was added as a signatory to the Citibank account only in May 1999 when the plaintiff visited Singapore with Sitompul, Indiana and her daughter and, the second defendant with her brother. The purpose of the visit was for Sitompul to have a health check-up and, because of the political upheaval in connection with the then elections in Indonesia, the family decided to stay in Singapore for a month until the violence in Indonesia subsided. The plaintiff was not told why Sitompul wanted to add the second defendants name to the Citibank account. Neither did Sitompul inform the plaintiff how the monies in the accounts should be distributed after her death.

9. In August 1999, after Sitompuls demise, the first defendant requested the plaintiff to add his name to the Citibank account. This was after the funeral rites according to Batak customs, had been performed for Sitompul. The first defendant claimed that if his name was not added to the Citibank account, the bank would freeze the account once it found out about Sitompuls death. The plaintiff then telephoned the bank but was told that the Citibank account would not be frozen because there were surviving joint account holders namely the plaintiff and the second defendant. The plaintiff accordingly informed the first defendant.

10. Later that same evening, the plaintiff received a call from an officer of Citibank informing her that the second defendant had applied to the bank to withdraw US$600,000 from the Citibank account. The plaintiff requested the officer to stop the withdrawal but was advised it was not possible because the second defendant was an authorised signatory but, the officer agreed to hold back the withdrawal for two (2) days to give the plaintiff time to discuss the matter with the first defendant. At Citibanks request, the plaintiff sent a letter to the bank to confirm her instructions.

11. The plaintiff visited the first defendant (with a trusted family staff James Panggabean); when she asked, the first defendant gave the excuse that he requested his daughter to withdraw monies from

the Citibank account because he wanted to distribute the same to the 3 siblings as beneficiaries of Sitompuls estate; pending such distribution, he wanted to deposit the monies with the Standard Chartered Bank (SCB) as it paid a higher interest than Citibank and with a Jakarta bank. To allay her fears, the first defendant promised the plaintiff that he would add her name to the SCB and Jakarta bank, accounts. With the persuasion of James Panggabean, the plaintiff signed documents to allow the monies in the Citibank account to be transferred out. The first defendant also procured her signature to a form to add him as a signatory to the Citibank account.

12. However, the first defendant did not add the plaintiff as a signatory to the SCB or Jakarta bank, accounts - whenever she inquired, the first defendant would ask her to wait. Between February and March 2000, the plaintiff met the first defendant several times. She questioned him repeatedly on the distribution of Sitompuls monies. It was only then that he told her that he would not be distributing the monies claiming that, by a Power of Attorney dated 21 August 1997 (the PA) from Sitompul, he was the sole beneficiary to her estate. However, Indonesian lawyers consulted by the plaintiff advised her that the PA had no effect upon Sitompuls demise. The plaintiff was not aware of the existence of the PA during her mothers lifetime, Sitompul never told her there was such a PA. The plaintiff opined that as Sitompul opened the three (3) bank accounts in Singapore after the PA was prepared, it showed that her mother intended that the surviving account holders should manage the respective accounts after her death, albeit for the benefit of the estate. Even if the PA was valid, the plaintiff argued that it would not apply to Sitompuls joint bank accounts but only to those accounts which were in her sole name. When she was shown the PA, the plaintiff visited the office of the notary public (Soekaimi) who had witnessed the signing by Sitompul; she could not verify the document as she was told he had passed away.

13. In May 2000, the plaintiff visited Singapore intending to withdraw the monies in the second BOA account, with a view to distribution after returning to Jakarta and discussing with the first defendant. She was told by an officer of BOA that, Indiana had objected to her withdrawal and she was not allowed to do so. Subsequently, the plaintiff received a call from BOA (in June 2000) advising she could proceed to make the withdrawal. Accordingly, on 19 June 2000, the plaintiff flew to Singapore. However, when she visited BOA to make the withdrawal, the plaintiff was told that the first defendant had objected to her making the withdrawal and had produced the PA to BOA.

14. After leaving BOA, the plaintiff visited Citibank and instructed them to freeze the Citibank account and not to allow any withdrawal therefrom without joint instructions from her and the first/second defendants. She confirmed her instructions with a letter handed to Citibank that day itself.

15. In September 2000, BOAs solicitors advised her that the bank was taking out interpleader proceedings. The plaintiff was advised to and did, appoint Singapore solicitors to act for her in the interpleader summons OS 1400 of 2000 (BOAs interpleader). The three (3) claimants named in BOA's interpleader were Indiana, the first defendant and the plaintiff respectively. On 12 February 2001, I ordered that hearing of BOA's interpleader should only involve the three (3) claimants. They were directed to state the nature and particulars of their claims to the monies in the first and second BOA accounts and their claims were to be determined by the same trial judge who hears this claim.

16. The plaintiff subsequently discovered that the first defendant had transferred monies from the Citibank account to SCB and Citibank Jakarta in the sums of US$425,568.10 and US$256,168.85 respectively. Apparently, the Citibank Jakarta account was originally in the names of the first and second defendants but later, the first defendant became the sole account holder.

The claim

17. In her Statement of Claim, the plaintiff averred that as the monies in the SCB and Jakarta Citibank accounts came from monies in the Citibank account, the same were held on trust by the first and second defendants as to her share as one of the beneficiaries of the estate. She alleged that the defendants had breached their fiduciary duties and that the first defendant had failed to account to her for her share of the trust monies. Accordingly, the plaintiff prayed inter alia, for a declaration that the monies in the aforementioned two (2) accounts belong to the estate. She also prayed for a declaration that the defendants hold the remaining monies in the Citibank account on trust for her as one of the beneficiaries of the estate, to the extent of her share namely one-third ( ).

18. In the common Defence which they filed, the defendants contended that by the PA and under the applicable law, Sitompul had, upon her demise, given all and any of her monies in any bank accounts to the first defendant for his management and use as he deemed necessary - making him the sole beneficiary of her bank accounts anywhere. The defendants admitted that the monies in the Citibank account were contributed entirely by Sitompul and upon her death, the first defendant was to be solely entitled to all the monies in the account; the surviving joint account holders were to operate the Citibank account according to his instructions and or surrender/utilise the monies in accordance with his instructions.

19. The second defendant admitted that she had applied to withdraw monies from the Citibank account on or about 11 August 1999 but, both defendants denied that the plaintiff is a beneficiary to the estate or, that the first defendant had promised to distribute monies to the plaintiff or, that he had made any representations or given any assurances to her as the plaintiff alleged.

20. In her Reply, the plaintiff contended that the PA in the Indonesian language was not a Will of Sitompul and did not have the effect of making the first defendant the sole beneficiary of any or all of her accounts in Singapore or elsewhere. The PA was merely a power of attorney and the power of management given thereunder to the first defendant lapsed upon the death of Sitompul and, did not extend to any or all of the joint bank accounts she maintained in Singapore and, which are governed by the laws of Singapore.

21. Even if the applicable law is Indonesian law, the plaintiff averred that the first defendant is not the sole beneficiary of the estate under Indonesian law but only one of the beneficiaries.

The evidence

22. Both parties called expert witnesses on Indonesian law, touching on the first defendants claim that he was the sole beneficiary of Sitompuls estate. Both experts were also from the Batak clan. The plaintiffs expert was Thomas Edison Tampubolon (Tampubolon) who has been in legal practice since 1981 and is familiar with cases involving inheritance law as well as probate and administration. Tampubolons opinion was sought and he gave his views, on the following issues:-

i. whether the surviving joint account holders rights to the funds remaining in the Singapore bank accounts of Sitompul should be decided by the laws of Singapore or the laws of Indonesia;
ii. if the above issue is to be decided by Indonesian law, what would be the effect on the surviving joint account holders right to deal with the funds remaining in the joint accounts;
iii. whether under the laws of Indonesia, the first defendant would be regarded as the sole heir to the estate of Sitompul, to the exclusion of his two sisters, on the ground that he is the only male in the family;
iv. whether the PA is valid and enforceable as a will and/or as a power of attorney;
v. would the plaintiff be entitled to at least one third share ( ) in the estate of Sitompul and consequently, to the funds in the Singapore bank accounts.

23. Tampubolon answered the above issues as follows:-

i. since the joint accounts were opened in Singapore, under Indonesians Private International Law, the laws of Singapore would be the applicable law to decide on he question of the continued operation of the joint accounts;
ii. even if Indonesian law applied, since the accounts were in the joint names of Sitompul and her children or grandchildren, under the laws of Indonesia, upon her death, the surviving joint account holders would be entitled to the balance monies in the joint accounts. If the monies therein were contributed solely by Sitompul, then the surviving joint account holder, although entitled to withdraw the balance, would later have to account to the beneficiaries of the estate for such sums withdrawn when the estate is distributed;
iii. under the traditional laws of the Batak community, it is no longer the custom that the first defendant as the only male child, would be the sole beneficiary of his mother's estate. Only in the case of inherited wealth such as family heirlooms would the son of a Batak family be entitled to inherit the same. The funds in the Singapore accounts did not fall within the scope of inherited wealth;
iv. under the laws of Indonesia the PA is invalid and does not operate as a power of attorney or as a will of Sitompul, and
v. since Sitompul died without leaving a will, her estate would then have to be divided amongst her three (3) children. As such the plaintiff would be entitled to a one-third ( ) share.

24. I should point out in a previous similar case which I heard (Originating Summons No. 811 of 1994), I had held that, the law applicable to joint bank accounts opened with banks in Singapore by Indonesian nationals, is Singapore law. The Court of Appeal (in Civil Appeal No. 28 of 1998) agreed with my views and dismissed the appeal filed by Credit Agricole Indosuez (formerly known as Banque Indosuez) against my decision.

25. Tampubolon set out the reasons for his opinion in considerable detail in his affidavit, referring to Indonesian law and judicial pronouncements where appropriate/necessary (see exhibit **T-4** as well as the plaintiffs bundle of documents PB1-57). He further explained the development of customary law and the development of inheritance law in the Batak ethnic group having the patrilineal system. On issues of customary law, Tampubolon affirmed that it was left to the parties concerned to seek settlement by submitting the issue to the traditional chief/leader. Even so, he said it was not an infrequent occurrence that the customary law applied keeps up with the times notwithstanding that it is different from that applied by the judge if the dispute is brought to the courts. Tampubolon pointed out in the application of the customary law, the traditional chief/leader stresses heavily on the efforts to reconcile the parties based on brotherhood and peaceful principles, with the result that the settlement reached is not by law and not based on legal certainty or principles. Such decisions or settlement are not binding and has no legal force if either party does not comply.

26. If an amicable resolution or settlement by customary law is not reached, the parties may request a judge to determine the dispute by submitting the same to the district court. The judge in arriving at his decision may determine what law is applicable to the dispute, hence determining the applicable law and at the same time ensuring that the decision is enforceable. The customary law which is developed through judicial decisions/rulings particularly on inheritance becomes jurisprudence. Jurisprudence has become the modernised customary law and has developed to become the national law. He opined that the role of judges and jurisprudence as sources and makers of customary/unwritten law has increasingly become important. Since the 1961 landmark ruling (no. 179), it has been held that a female child has an equal right to inheritance; this is not only applicable to Bataks but to all ethnic groups. The ruling was also applicable to widows as before the ruling, they were not heirs of their late husbands. He said that logically, the same ruling should apply when the mother dies her children should be her heirs regardless of gender.

27. Tampubolon explained that Indonesians in general live in a kinship tiein which a family consists

of the father, mother and their child or children, who are no longer bound to the alliance and circle of relations under the customary law, in the geographical or sociological area where they came from. This particularly applied to families who had left the circle of the community subject to the customary law and moved to live in major and metropolitan cities where the effectiveness of the customary law is no longer felt in daily lives.

28. The inherited wealth which comprises of lands, houses and other heirlooms left behind in the native village would therefore be far removed from the reach of the kinship tie. The inherited wealth/hereditary property is subject to the rules of customary (adat/local) law whereas, the family property which is formed from a new way of life based on the kinship tie, has a new social unit which is parental in nature.

29. Where marriage is concerned, the national law of Indonesia recognises that men and women are equal in their rights and obligations having regard to the marital properties. Jurisprudence as an important source of customary law in the matters of the Family Law and Customary Inheritance law recognises the same status between men and women as marriage law does. Hence, if an issue of inheritance arises which is submitted to a court, for the sake of legal certainty, the judge must decide the case based on jurisprudence disregarding the local customary law, essentially recognising equal rights between men and women.

30. On the PA (see DB1-4), Tampubolon elaborated on why he considered the document invalid after Sitompuls demise. The document (as translated by the defendants) reads as follows:

> The undersigned [Madam Sitompul] hereby states that:
>
> Upon my demise, I authorise my biological child [Mindo Lumban Gaol] to manage, administer, transfer, receive and sign all my financial matters in the bank as well as utilise the funds when necessary.
>
> Thus this Power of Attorney is truthfully made.
>
> Jakarta 2 August 1999
>
> (Signed)
>
> Soekaimi SH
>
> Notary public, Jakarta
>
> Number: 4511/L/1997
>
> I, the undersigned Soekaimi, Master of Laws, a notary public in Jakarta, hereby state that I have read and explained the content of this declaration to:
>
> Madam Dumatair Sitompul, a private employee, residing at Jakarta Pusat, Jalan HOS Cokroaminoto, number 58, Rukun Tetangga 006, Rukun Warga 004, Gondangdia Village, Sub-District of Menteng, Resident identity card number 1602.3585/460719002.
>
> I, the notary public, hereby acknowledge and sign this declaration produced before me.

Tampubolon pointed out that in Indonesia, powers of attorney and Wills come under the Indonesian Civil Code. Articles 1792, 1793 and 1781 apply to powers of attorney. The provisions as per his translations read as follows:

> Article 1792:
>
> Mandate (power of attorney) is a contract whereby one person, the mandator/principal, gives to another, the mandatory/attorney in fact, a power to transact some business in his name.
>
> Article 1793:
>
> A power of attorney may be given and accepted by authentic deed or under private signature, even by letter or orally.
>
> Article 1813:
>
> Power of attorney terminates due to the revocation by the principal of the power of attorney, due to the notice by the principal of the discontinuance of the power of attorney, or due to the death, put under legal control, or bankruptcy of the principal or the attorney in fact, due to the marriage of the female principal or female attorney in fact.

Consequently, when Sitompul passed away, the power of attorney to the first defendant ceased to have any effect.

31. Tampubolon tendered to court Articles 931, 932 and 944 of the Civil Code (see **P1**) and said there are three (3) types of Wills therein stipulated:

> (i) made by and before a notary public and witnessed by two (2) persons;
>
> (ii) made by the deceased in his own handwriting with two (2) witnesses which is then surrendered to a notary who retains it; and
>
> (iii) a secret deed made by the deceased with 4 witnesses, then sealed in an envelope and later given to a notary.

However, Batak customary law does not recognise these 3 types of Wills. The first defendant on the other hand had referred to Articles 875 and 1792 of the Civil Code (see exhibit **D5**); the translations read as follows:

> Article 875:
>
> A Will or Testament is a deed in which stipulates a statement of a person concerning with what his/her wishes would be after he/she died, and it could be revoked by him/her.
>
> Article 1792:
>
> A delegation of power is an agreement by which a person delegates a power to other person who is authorised to execute on behalf of the donor for a certain matter.

Based on the provisions of the Civil Code referred to earlier, Tampubolon was of the view that the wording of the PA was consistent with it being a power of attorney and not a Will; one looks at the contents of a document in order to determine its nature. The words in the PA *'saya memberi kuasa'* means 'I authorise' whereas if it was a Will, the word used would be '*wasiat*' meaning testament. Further, the title itself *'Surat Kuasa'* means a power of attorney or a proxy. In any case, under Indonesian law, a notary has to authenticate a document to say whether it is or is not, a Will. In the PA, the notary Soekaimi merely signed as a witness. Further, if it was indeed a secret Will made by Sitompul, the notary should have opened the document and notified the heirs upon her death but it was not done. Had Sitompul made a Will of the other two (2) types, the notary would or should have informed Sitompul he was authorised to make a Will and advise her on it. Tampubolon pointed out that if the PA was indeed a Will, it should have been witnessed by two not one person, executors should have been appointed and it would have elaborated on how Sitompul's assets were to be divided.

32. A Will under Indonesian Civil Law has also to be contrasted with a 'tona' under Batak customary law. By definition, according to the Inheritance Law of Batak Toba (exhibit **D4**), a 'tona' under Batak custom is similar to a testament, in fact it is akin to an oral Will; it states who shall own/is entitled to the testator's estate. To be valid a 'tona' must be made by an adult;

a. who is mentally sound;
b. who is able to speak clearly;
c. made in the presence of close family members or 'Dalihan Natolu'.

It would also be preferable if the testator made the 'tona' in the presence of his heirs.

33. Tampubolon was cross-examined at length, in the course of which he refuted the testimony of the first defendant's expert witness (Sori Tua Hutagulung) that under Batak custom, a female who marries outside the clan (as in the case of Indiana) would be considered an outcaste and would belong to her husband's clan. Neither does a married woman lose her surname or her inheritance from her parents by reason of marriage. In Sitompul's case, she remained a member of her own clan (known as 'marga') and was also a member of her husband's clan (Lumban Gaol).

34. Counsel for the defendants had referred Tampubolon to extracts from research material (exhibit **D1**) on customary Batak law arising from a project undertaken by the High Court of Medan in 1975, on the instructions of the then Chief Justice. It is noted that the survey was conducted on Bataks living in the Lake Toba area. The following extracts (see **D4**) came from the research findings:

> Inheritance law of Lake Toba
>
> 3. In Batak community, the paternal system is always used to determine the hereditary lines.
>
> 4. The Batak Customary Law does not have an appropriate term for the inheritance law. Although, in the Batak language has a term known as manean or reanteanan. But this term is only used or applied if the person who inherits has no son.
>
> 5. The heirs
>
> Only sons are the heirs

The priority sequences order of the heirs are as follows:

1. own son

2. If the son is dead, the heirs must be direct line from the hereditary of own son;

3. deviated to the brothers including his hereditary direct line;

4. deviated to the family with the hereditary direct line from the same grandfather

6. Daughter

A daughter is not the heirs or excluded as the heirs

The meaning of daughter shall include the own daughter, wife(s) and widow(s)

7. Rights of daughter

As long as a daughter has not married yet, she has the same rights and must be treated by the parents the same as her brothers

8. If the person who inherits does not have son, but he has daughter only, the said daughter could enjoy with the parent's inheritance before she gets married. The content of the enjoyed right is limited up to the necessity and appropriate things for the living of the said daughter.

35. The first defendant relied on the above extract for his case, as well as on extracts from textbooks **Inheritance Law in Indonesia** (see **D6**) and **Principles and Structure of Customary Law** (**D7**) which gave the same view -- that a married female (of Toba and Lampang) Batak clan would not be an heir of her parents' estate. Tampubolon however, disagreed with the survey findings as well as with the authorities cited in support thereof.

36. A factor which Tampubolon relied on for his differing view was the certificate obtained by Sitompul on 5 November 1996 from the district court of Jakarta (para 3 *supra*) declaring herself and her three (3) children as the heirs of Lumban Gaol. Following upon that, the children on 1 December 1996 (see **D1**) relinquished to Sitompul their entire rights of inheritance. He opined that the two (2) certificates indicated Sitompul's wish from the outset, not to come under Batak customary law since the latter recognises neither instrument. It indicated that Sitompul preferred to come under Civil Law as, she would have had no status or claim to her late husband's estate, had Batak customary law applied. The first defendant also implicitly accepted that Batak customary law did not apply as, if it did, his two (2) sisters would have had no share to Lumban Gaol's estate.

37. As for the practice of 'pauseang' or making gifts in Batak custom, Tampubolon explained this had existed for a long time (before World War II), where women who had no rights of inheritance, would ask from her parents for a rice field or such like for herself and her husband. However, since 1950-60s, the practice did not exist in Jakarta for the reason that the capital has no rice fields, although the practice could still continue in Sumatra. In place of 'pauseang' Batak parents nowadays would give their daughters a house.

38. Questioned on the concept of 'jurisprudensi tetap' and 'jurisprudensi', Tampubolon explained that the former referred to decided cases of the Supreme Court which lower court judges would follow. Where the decisions are only jurisprudensi, lower courts do not have to follow the decisions but can come to a different conclusion. He felt that the precedent most applicable to this case was Ruling No. 179/K/Sip/1961 of the Indonesian Supreme Court, dated 23 October 1961. The case concerned a dispute between members of the Karo tribe (the tribe). One Rolak Sitepu (the deceased) had died leaving a piece of land but he had no sons. In accordance with the tribe's customary law, the nephews of the deceased (his brother's sons) claimed the land as his heirs. Their claim was contested by the daughters of the deceased. The piece of land had originally been inherited by the deceased from his own father. The nephews of the deceased contended that his daughters only had a right to use the piece of land during their lifetime but not to inherit it. The Supreme Court held that the law applicable to the whole of Indonesia (including Karo) is that sons and daughters shall be jointly entitled to the inherited assets/properties meaning that the portion of the sons is equal to the portion of the daughter. Ruling No. 179/K/Sip/1961 had become 'jurisprudensi tetap' because there were other similar rulings (which Tampubolon referred to in his affidavit).

39. As earlier mentioned (para 32), the first defendant's expert witness was Sori Tua Hutagulung (Hutagulung). Under cross-examination (N/E 117), Hutagulung revealed he was told to give an affidavit by the first defendant. His affidavit was based on information given to him by the first defendant (see para 3) and he was asked in general on:

a. the prevailing Inheritance Law in Indonesia;

b. who are the legal heirs of Sitompul;

c. what is the status of the law and the right of the first defendant to the monies in the Singapore bank accounts (in which reference was made to the PA).

However, Hutagulung was not told there were court proceedings in Singapore or, the facts of this case.

40. Hutagulung's answers to the first question was as follows:

a. Inheritance law is included in the Civil Law but there is no inheritance law which applies equally to all races in Indonesia;

b. the law recognises three (3) groups of people namely: (i) European; (ii) Indigenous and (iii) Eastern (Timur Asing) each of which practise different inheritance law.

c. the inheritance law applicable to group (i) is the Civil law while the other two groups apply their traditional inheritance law. Further, the different ethnic groups (exceeding 25) in group (iii) have their own traditional inheritance law, including the Bataks.

Consequently, the extracts of the Civil Code (**P1** and **P2**) referred to by Tampubolon would not be the applicable law for Sitompul's estate.

41. On the second question as to who are the heirs of Sitompul, Hutagulung stated:

a. the inheritance law applicable to her estate is Batak traditional inheritance law derived from the patrilineal system whereby the name of a certain male becomes the name of the clan or 'marga';

b. marriage between males and females within the same clan are strictly forbidden as they are still from one family, they have to marry other clans;

c. a female who marries is admitted to her husband's clan and her children would belong to her husband's clan;

d. married women have no right of inheritance to their parents' estates; however they have a right to ask the heirs of their parents for a part of the legacy and if the heirs grant their request, what is given to the married daughters is called 'pauseang' or 'holong ate' usually in the form of houses;

e. as both the plaintiff and Indiana are married, the first defendant is the sole heir of Sitompul's estate.

42. As for the PA, Hutagulung opined that it was actually a last Will and Testament although titled a power of attorney because:

a. it had never been handed over by Sitompul to the first defendant as her attorney; and

b. the first defendant became aware of its existence only after her demise when, by coincidence he checked her personal belongings;

Unless Sitompul's signature was challenged, Hutagulung stated that the document was perfect evidence of power and the first defendant, based either on Batak traditional law or 'agreement law' or 'evidence law', had the right to withdraw monies from the Singapore bank accounts.

43. Hutagulung disagreed with Tampubolon's views that court rulings pertaining to disputes from the Batak community had become jurisprudensi tetap and hence applicable to Bataks. He said that the judgements had to be fair and just before they can be deemed jurisprudensi tetap. As far as he was aware, the Batak community does not follow the court rulings including Ruling No. 179 and since 1976, there had been no court rulings which pertain to Batak customary law.

44. I had noted that the language in Hutagulung's affidavit was not what one would expect from any expert witness. I had also inquired why he did not mention any of the rulings/cases referred to by Tampubolon in particular Ruling No. 284 K/Sip/1975 [see P4] (which was a dispute involving the Simalungun clan [another group of Bataks]) wherein the Supreme Court decided that wives and daughters are heirs under customary law; Hutagulung's cavalier response was, that he was not asked nor was he obliged, to do so he had given answers to questions put to him by the first defendant and in any case, the rulings did not apply to Bataks. Hutagulung repeated this stance more than once, even in re-examination. All I need to say is, that his attitude did not help to improve his credibility as an expert witness.

45. In cross-examination, Hutagulung revealed he had been advising the first defendant on Batak customary law before these proceedings and, had represented the first defendant in resisting Indiana's proceedings in the Jakarta courts, including applying to strike out her claim. He defended his role in the Indonesian proceedings by saying that he was the first defendant's consultant in those proceedings, not his lawyer but did not elaborate on the differences if any, between the two roles (N/E 118). Apparently, his affidavit was also adapted from an opinion he had filed on the first defendant's behalf for Indiana's claim. It was equally apparent from his cross-examination that Hutagulung was unaware of the fact that the plaintiff and Indiana worked in and ran the company/business. He agreed it would be fair if the plaintiff and her sister each had a share ( ) of Sitompul's estate in that case. When he was recalled to the witness stand after Hutagulung had

testified, Tampubolon disagreed with the former's view that Batak customary law prevailed over Supreme Court Rulings such that the latter did not apply to the community; I shall return to this portion of his testimony later.

46. In the course of their testimony, both Tampubolon and Hutagulung had touched on the system of 'Dalihan Natolu'. This referred to a Batak tradition of having members of a clan or marga come together for a family council. In this regard, the first defendant had called as his witness one Maruli Tua Lumban Gaol (Maruli), who claimed to be a close relative of the late parents of the plaintiff/first defendant and, an elder of the clan. Maruli (DW2) asserted that during their lifetime, Sitompul and her husband used to take his advice and he represented them on many matters, especially those touching on Batak customary law. Maruli referred to his position as chairman of the Batak Descendants Association (PARI for short) for the period 1997-2000 as another credential for giving evidence. He claimed that PARI is the correct body with the authority and knowledge to make pronouncements on the applicable Batak customary law. Maruli had testified that on 23 and 28 February 2000, at the request of the plaintiff and Indiana, a family council was held at the residence of Sitompul at 58, Cokroaminoto Jakarta, for the council's decision on matters relating to the division of her assets and property. Present were the three (3) siblings, the sisters and brother of Sitompul, Maruli and his wife and another couple form the Lumban Gaol clan. Maruli claimed that at this family council which was properly constituted according to Batak customary law, it was unanimously agreed that:

a. the first defendant was the head of the family in place of his late parents;

b. the PA found amongst the possessions of Sitompul was consistent with Batak customary law, represented her last Will and Testament and should be given due respect, recognition and effect;

c. as the head of the family, the first defendant should exercise compassion towards his sisters and exercise his discretion in granting some part of his inheritance to them.

47. However, both the plaintiff and Tampubolon refuted Maruli's claims. Tampubolon pointed out that PARI is only a clan association which renders advice or makes recommendations where there are quarrels amongst members. The role of the association is to advice on Batak traditions such as wedding and funeral ceremonies. When PARI makes recommendations on matters of inheritance or divorce, the same are not binding on the parties in dispute and cannot be enforced. If the recommendations are not accepted, the parties involved would still have to go to court.

48. The plaintiff on her part disputed Maruli's claim to be a close relative of her late parents, he was only from the same clan and distantly related. She further disagreed with Maruli's version of what transpired at the council meeting to which he asked to be invited, not that he was invited by her. She pointed out (contrary to Maruli's claim) that she had not agreed that the PA was the Last Will and Testament of Sitompul; she merely agreed that it was signed by Sitompul and she was not given the same although she and Indiana had requested the first defendant for copies of the document. This aspect of the plaintiff's testimony was confirmed by Maruli who said he had also asked for a copy of the document but was not given one by the first defendant.

49. As for the first defendant (DW3), his testimony was a re-affirmation of his affidavit, that he was the sole beneficiary to Sitompul's estate, being her only son. He testified (N/E 222) that the certificates of inheritance and renunciation referred to earlier (para 36) were needed by Sitompul to change the bank accounts from his late father's name to her name, including the Singapore and Jakarta bank accounts. This testimony was not in his affidavit evidence and not unexpectedly was objected to by counsel for the plaintiff, particularly when it had been put to her client that the reason for the certificate of inheritance was to enable the mother to realise the father's other assets.

50. Cross-examined on the reason behind his application in summons in chambers (no. 1120 of 2001/T), the first defendant said he felt the Jakarta courts was the more appropriate forum to determine the plaintiff's claim. When it was pointed out to him that his stand was inconsistent with his conduct in contesting Indiana's claim in Jakarta, the first defendant offered no convincing explanation. In fact, he had applied (with Hutagulung's assistance) in April 2001 to strike out Indiana's claim on the basis that the court lacked jurisdiction. Indiana's proceedings (see exhibit **DS-2** in Dara Singh's affidavit) filed in the South Jakarta courts included a claim for a share of the monies in the BOA and Citibank accounts. Notwithstanding that his own expert Hutagulung had agreed that the plaintiff and Indiana were entitled to a share of Sitompul's estate in view of their contributions to the family businesses, the first defendant would not admit (NE 229) that Hutagulung had agreed. He gave no credit to either sister for their work. The first defendant went further to assert that Hutagulung's view did not reflect the law, contradicting his own expert's testimony. Questioned why he had not instructed Hutagulung to address the issues in this case in Hutagulungs testimony, the first defendant said it was not necessary; his brief to Hutagulung was merely to answer the questions he posed.

51. Not unexpectedly, the first defendant corroborated Maruli's testimony on the PA being a valid last Will and Testament of Sitompul and on what transpired at the family council meetings on 23 and 28 February 2000. Indeed, the first defendant went further to say that when he instructed his daughter (the second defendant) to withdraw US$600,000 from the Citibank account on 11 August 1999, he was carrying out Sitompul's wishes. He had intended (N/E 249) to use the withdrawal to pay land taxes, buy land from others (including the plaintiff's present residence at Jalan Suwiryo, Jakarta) and educate Indiana's children; this was in accordance with Sitompul's plans made at the time the account was opened. This portion of the first defendant's testimony only emerged under cross-examination in his affidavit he had only asserted that Sitompul had intended that part of the monies would remain in Singapore for the education of his children. At other times during his cross-examination (N/E 248 and 259), the first defendant had claimed that the withdrawal was to enable him to settle his late mother's outstanding medical fees, pointing out that the plaintiff herself had withdrawn a sum of US$100,000 for that purpose from the first BOA account. This explanation is patently untrue; the second defendant withdrew the sum of US$600,000 almost a month after Sitompul's demise; I find it incredible that Mount Elizabeth Hospital where she was warded, would allow her to be discharged without full payment of their fees, particularly when she was not a resident of Singapore. The first defendant shifted his stance yet again when, at another stage of his cross-examination (N/E 259), he admitted that the withdrawal from the Citibank account was not to pay for Sitompul's expenses.

52. As for the failure of the second defendant to appear to defend these proceedings, the first defendant explained away her absence by the fact that she could not leave her studies (N/E 257).

The decision

53. On the written and oral evidence adduced before me, I had no hesitation in deciding the plaintiff's claim in her favour. I found no merits in either the defence put up by the first defendant or in his summons-in-chambers application; I shall now set out my reasons.

54. I shall first deal with the first defendant's application to stay these proceedings on the ground of *forum non conveniens* in the alternative, that the plaintiff has no *locus standi*. In opposing the application on the first ground, counsel for the plaintiff pointed out the following:-

(a) the plaintiff had filed these proceedings on 27 September 2000, yet the first defendant only made the application on the first day of trial when it should have been made at the earliest opportunity. His

previous application for a stay unless security for costs was provided did not succeed;

(b) the application was supported not by the first defendant's affidavit but by his counsel's; indeed, the first defendant had never filed any affidavit for his previous numerous (7) applications, nor did he pay costs previously awarded to the plaintiff;

(c) the application was not bona fide as the first defendant was also attempting to strike out Indiana's claim in the District Court of Central Jakarta (this was subsequently confirmed by the first defendant's testimony under cross-examination).

55. On the alternative ground for the application, counsel for the first defendant argued that unless and until a grant of probate or letters of administration is/are extracted/obtained for Sitompul's estate, no one let alone the plaintiff had the requisite status quo to commence this suit. He said that at the highest, the plaintiff had a right to bring an action on her own behalf, as a beneficiary of the estate. Counsel for the plaintiff on the other hand argued that her client was only claiming the monies in the Singapore bank accounts as a surviving joint account-holder, and not claiming on behalf of Sitompul's estate. Further, it lay ill in the mouth of the first defendant to say the monies in the Singapore bank accounts are estate monies when his own daughter (the second defendant) had wrongfully withdrawn monies from the Citibank account on his instructions. Yet in the same breath, he asserted that the monies in the BOA account should be paid to him as the beneficiary of Sitompul's estate. This submission was confirmed by the first defendant's counsel.

56. I accepted the plaintiff's arguments and dismissed the application accordingly. Even without the benefit of listening to the first defendant's oral testimony, the application was without merit. I disagreed with the submission that a question of law was involved and as such, the application could be made at any time. An application based on the first ground should have been made from the outset, not on the first day of trial. Moreover, the history of this litigation showed that the first defendant's previous conduct was inconsistent with his stand that Indonesia was a more appropriate forum. He had (through his previous solicitors) on 28 December 2000 applied for security for costs against the plaintiff in the sum of $200,000; the application was dismissed on 15 January 2001. On 22 March 2001, the first defendant made a similar application this time in the amount of $100,000; the application was also dismissed, on 16 April 2001. He should not be allowed to blow hot and cold at one and the same time.

57. The submission on the alternative ground was misconceived as the plaintiff's claim was not premised on her being a personal representative of the estate. In this regard the case of *Wong Moy* (*administratrix of the estate of Theng Chee Khim deceased*) *v Soo Ah Choy* [1996] 1 SLR 586 cited by counsel for the first defendant was factually dissimilar. There, the court held that the plaintiff who had applied for (and was granted) letters of administration to her late husband's estate, did not have the status to bring proceedings on behalf of his estate as the grant had not yet been extracted, at the time proceedings were filed. In this case, the plaintiff did not make a claim on behalf of Sitompul's estate; she claimed as a beneficiary to the extent of her share, of the monies in the Singapore bank accounts and against the two defendants for breach of their fiduciary duties in refusing to distribute her share of the monies therefrom. It was the defendants who pleaded in their defence that the first defendant was the sole beneficiary of the estate.

58. I turn now to the other cases cited by counsel for the first defendant. He had relied on my decision in *PT Jaya Putra Kundur Indah and Ang & Sons Investments Pte Ltd v Guthrie Overseas Investments Pte Ltd* (unreported). I would first of all point out that in that case the application for a stay of proceedings by the defendants was filed on 22 March 1996, 21 days after the plaintiffs had commenced proceedings in Suit No. 395 of 1996 on 1 March 1996. Secondly, the dispute concerned

the Indah Puri Resort (the project) in Batam Island, which was a joint-venture undertaken by the plaintiffs and the defendants. The first plaintiff is/was an Indonesian company while the second plaintiff and the defendants are Singapore companies.

59. The above case contained a factual matrix which was very different and distinguishable from, this case. The project was sited in Indonesia and was governed by/subject to Indonesian law. Indeed, the joint venture itself required approval from the President and various other Indonesian authorities. Under such circumstances, I granted the defendants application for a stay against which decision the plaintiffs filed their notice of but did not proceed with their, appeal.

60. The other case cited by counsel for the defendants was *Oriental Insurance Co Ltd v Bhavani Stores Pte Ltd* [1998] 1 SLR 253. There, the appellants/defendants had applied for a stay of Singapore proceedings when the Singapore plaintiffs sued under various insurance policies for losses arising out of short-delivery of a shipment of cashew nuts from Guinea Bissau to Tuticorin, India. The assistant registrar had dismissed the appellants application which a judge had affirmed on appeal. The Court of Appeal reversed the decision below and in allowing the appeal held inter alia:-

i. The respondents were a Singapore incorporated company. The appellants were incorporated in India. Although the appellants had a registered office in Singapore, this office had not been operative since 1988. These considerations favoured neither forum as solicitors would still have had to be instructed from overseas and representatives from either side would still have to had to travel no matter where the litigation took place.
ii. Many factors relating to the underlying contract pointed to India. The policy insured goods delivered to India and offloaded in India by Indian stevedores. The goods were surveyed on ship in India by Indian surveyors. The goods were thereafter delivered to Indian consignees. Payment for the shipment was made by letter of credit in India issued by an Indian bank. The witnesses to the offloading, spillage, recovery and delivery of the nuts were also located in India. The location of the witnesses was an important factor because the dispute concerned questions of fact.

On the facts, the Court of Appeal quite rightly reached an opposite conclusion from my decision in *PT Jaya Putra Kundur Indah's* case. Like the Court of Appeal, I had applied the principles/tests in *The Spiliada* [1987] 1 AC 460 and which were followed in *Brinkerhoff Maritime Drilling Corp v PT Airfast Services* [1992] and *Eng Liat Kiang v Eng Bak Hern* [1995] 3 SLR 97 namely:

a. a stay will only be granted where the court is satisfied that there is some other available forum, having jurisdiction, which is the appropriate forum for trial of the action i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice (per Lord Goff at p 476 in *The Spiliada*);

b. where the plaintiffs have commenced an action in Singapore and the court's jurisdiction is founded as of right, the legal burden rests on the defendant to persuade the court to exercise its discretion to grant a stay. It is for the defendant to show not only that Singapore is not the appropriate or natural forum, but that there is another available forum which is clearly or distinctly more appropriate than the Singapore forum.

61. The burden was on the first defendant to show that Indonesia was the more appropriate forum to determine the plaintiff's claim in terms of having the most real and substantial connection. He failed to discharge the burden; hence I refused a stay.

62. Contractually, the two (2) banks were obliged to pay the plaintiff the monies in the Citibank and second BOA account(s). They did not do so because of objections raised by the first defendant on the basis that he was entitled to those monies as Sitompul's sole heir/beneficiary. Counsel for the first defendant had cited Rule 132 from the textbook *Dicey & Morris* on *The Conflict of Laws* (13 ed vol 2 p

1026) to the effect that the succession to the movables of an intestate is governed by the law of his/her domicile at the time of death. That submission has no relevance to the plaintiff's claim as it was not premised on her being the personal representative of her mother's estate; she was suing based on her legal title to the monies. Hence, my decision in OS 811 of 1994 (*Banque Indosuez v Sumilan Awal & 2 others*) that the law applicable to joint bank accounts opened with banks in Singapore by Indonesian nationals is Singapore law (see para 24 *infra*). Hutagulung had admitted (N/E 178) that he had been asked by the first defendant how Batak customary law applied to the first defendant vis-a vis the Singapore bank accounts. Consequently, the first defendant cannot thereafter adopt a stand inconsistent with his pleaded case, and say that a Singapore court cannot decide the dispute based on Indonesian laws of succession for the Batak community. In any case, that determination is not within the purview of Hutagulung's brief, it is to be decided by the courts of Singapore.

63. As to the right of survivorship of such joint accounts, there is textbook authority for this proposition; I refer to *Ellinger and Lomnicka's Modern Banking Law* (2 ed [1994]) at p 228 where the learned authors state:

> It is well established that the legal title in the deceased's moiety in the joint account vests in the survivor.An equitable or beneficial title, which is quite separate from the legal one, may nevertheless vest in the estate. The position depends on the facts.The position differs if the amounts were paid in entirety or predominating by the deceased. In such a case the rights of the estate depend on the deceased's intention in maintaining the funds in a joint account..

The following extract appears in another textbook namely, *Poh Chu Chai's Law of Banker and Customer* (4 ed p 248):

> As between persons who stand in a special relationship, like a husband and wife or a person *in loco parentis*, there is normally a *prima facie* presumption that the husband or person in loco parentis intends to benefit the other person by opening a joint account. This presumption however, may be rebutted if the person who deposits the funds in the account can show that he did not intend to benefit the other person.

The decision

64. Before I give the reasons for my decision, it would be useful to look at the orders I made on 25 June 2001 when I awarded judgment to the plaintiff; the relevant orders are as follows:

> a. upon the death of Madam Dumatiar Sitompul (Mdm DS) on 11 July 1999, the legal title to the monies remaining in her Citibank Singapore Account as at the date of her death (the Trust Monies) had vested in the plaintiff and/or the second defendant as the surviving joint account holders;
>
> b. the beneficial interest in the Trust Monies belong to the estate of Mdm DS and that the plaintiff, the first defendant and Indiana Lumban Gaol (Indiana) being the children of Mdm DS are the three beneficiaries of her estate and each is entitled to a one third ( ) share of the Trust Monies;
>
> c. the plaintiff and/or the second defendant hold the Trust Monies on trust for

the estate of Mdm DS and for the plaintiff to the extent of her one third ( ) share therein;

d. the second defendant had acted wrongfully and in breach of the trust when she transferred part of the Trust Monies in the sums of USD$425,568.10 AND US$256,168.85 on or about 11 August 1999 to the first defendant's and her joint accounts with Standard Chartered Bank, Singapore and Citibank NA, Jakarta respectively;

e. the first and second defendants hold the respective sums transferred to their accounts with Standard Chartered Bank Singapore and Citibank NA, Jakarta on trust for the estate of Mdm DS and for the plaintiff to the extent of her one third ( ) share;

f. the first and second defendant are in breach of their fiduciary duties owed to the plaintiff in refusing to distribute to the plaintiff her one third ( ) share of the monies in the first and second defendants' accounts with Standard Chartered Bank, Singapore and Citibank Jakarta.

It is to be noted that the plaintiff only obtained declaratory relief in relation to Sitompul's estate as regards her one third ( ) share.

65. I turn now to the testimony of the two (2) experts. One reason for my ruling in favour of the plaintiff was the evidence of her expert Tampubolon. He had taken great pains in his affidavit to establish that Batak traditional law had, over the years been modified, if not totally changed, by case-law which had become jurisprudensi tetap or what we would describe as jurisprudence. Tampubolon's testimony withstood lengthy and vigorous cross-examination by counsel for the defendants. He had obviously done considerable research on the opinions sought from him by his instructing counsel.

66. Tampubolon's testimony is to be contrasted with that of the first defendant's expert Hutagulung, whose opinion was superficial, lacked research, was often unfounded and hence was unreliable; far worst, it could not be considered as coming from an unbiased and independent witness as he/his partner had acted (and was still acting) for the first defendant in Indiana's Jakarta proceedings. In addition, his affidavit opinion was based on what the first defendant told or rather chose to tell, him; he did not make an objective assessment based on the relevant documents of this case, which apparently he did not even sight, nor was he told about this case (N/E117) even when he affirmed his affidavit of evidence (26 April 2001) in Jakarta. Unlike Tampubolon, Hutagulungs views were based on what he heard, not what was decided by the highest judicial authority in Indonesia, namely the Supreme Court. Hutagulung's knowledge of Indonesian judicial rulings was at best vague/cursory and at worst, out-dated and inaccurate. Hutagulung had opined that the first defendant was entitled to Sitompul's entire estate notwithstanding he was aware of the 1975 Supreme Court decision concerning Batak inheritance law which ruled that males and females are equal (N/E115). Consequently, I rejected Hutagulung's testimony.

67. The first defendants testimony equally left much to be desired; he prevaricated, changed his stance and departed from his written testimony when it suited his case to do so; he took liberties with the truth. In addition to what I have pointed out earlier (para 51), one other instance I can cite in this respect was his claim (N/E 253) that the monies in the Citibank account was meant for family members. This was to overcome the omission of his name from that account. Yet, when it came to the first BOA account (of which he was a joint account-holder), the first defendant's stance was that

the monies should all go to him as the only son. He did not impress me as a capable person either. His taking 7-10 years to rebuild an office block in Jakarta belonging to Sitompul would be a reflection of his poor calibre; I disbelieved his explanation that bureaucracy, not him, was the cause of the delay; he was certainly far less capable than the plaintiff.

68. The first defendant was also a devious character. As was put to him during cross-examination, he was prompted to request his daughter/the second defendant to withdraw US$600,000 from the Citibank account after he was informed by the plaintiff (upon checking with Citibank), that the account would not be frozen as he thought it would be, upon Sitompul's demise. The withdrawal was to pre-empt the plaintiff herself from taking out the monies. He then tricked the plaintiff into signing the forms which enabled him to become a joint-holder of that account and then to transfer out the balance therefrom to SCB and Citibank, Jakarta.

69. Whether it was greed (which I believe is the more likely) that prompted him to deny his two (2) sisters any share to his mothers estate or, it was his stubborn belief that his position as Sitompuls only son and heir under Batak customary law was unassailable, the first defendant struck me as a totally unreasonable person. I say this because of his reliance on the PA as Sitompuls Will.

70. In order to rely on the PA as his late mothers Will, the first defendant would have to accept that the Civil Code/law applied to her estate, not Batak customary law, which only recognised a tona or oral Will, not the 3 types of Wills which exist under Indonesian civil law. Even if the PA could be said to be a written 'tona', it was Tampubolon's testimony, when recalled to the witness stand (N/E 192), that it was still not a valid tona under Batak customary law. This was because the Dalihan Natolu should be present to witness the making of the written tona to ensure it was indeed made by Sitompul prior to her death. The purpose of a Dalihan Natolu is not to approve or validate a written tona as Maruli and Hutagulung both tried to suggest was what was done (for the PA), at the meeting on 23 February 2000. It was claimed by the first defendant that he found the document sometime after 19 July 1999, amongst the possessions of Sitompul in her room. As the PA was found well after her demise, how can it be considered a valid written tona when the Dalihan Natolu was not present to witness its signing by her?

71. The second difficulty the first defendant faced was, the alleged Will was incomplete as it did not spell out the disposition of Sitompuls entire estate, only the management and utilisation of her (unidentified) bank accounts, by the first defendant. That being the case, there was a partial intestacy of her estate if indeed the document was her Will; how were her remaining assets to be disposed off? In this regard, I need to digress and refer to the testimony of Hutagulung (N/E 164) when he was cross-examined on this issue. He had opined that Sitompul's remaining assets were to be distributed in accordance with traditional Batak customary law which in effect, meant that they would all go to the first defendant, according to his interpretation. However, an analysis of his opinion would show it would give rise to a ridiculous situation. I have no reason to doubt Tampubolon's opinion that the PA does not qualify as a valid written tona. That being the case, the only way to give validity to the document would be to fall back on the provisions of the Indonesian Civil Code to say it is a Will. If so, how can the first defendant maintain that Batak customary law would apply to the distribution of the remainder of the estate? Just the language of the PA itself (original and translated) makes it clear that it could not be anything else other than a power of attorney, which under the Indonesian Civil Code (Article 1813) ceased to have any effect upon Sitompul's demise.

72. It cannot be disputed that Sitompul in her lifetime was an exceptionally capable woman, a far cry from the traditional Batak woman. She had built up into a multi-million dollar operation, the business as well as the company and in the process had attained considerable wealth. This, coupled with the fact that she applied to the Indonesian courts for a certificate of inheritance (of her husbands

estate) in her as well as her children's, favour, showed that she was not someone who believed in/relied on traditional Batak law to decide inheritance matters. My view is reinforced by the fact that she went further to obtain a certificate from her children relinquishing their rights of inheritance to her. Consequently, her own estate should be dealt with under the provisions of the Indonesian Civil Code.

73. In contrast to the first defendant, I found the plaintiff to be forthright and candid in her testimony. There was no change in her position, either in her own oral testimony or in her cross-examination. Her version of events was more consistent with documents produced in court and hence, more credible.

Conclusion

74. This claim could and should have been tried based purely on Singapore law, in accordance with the contractual relationship/obligations between the two (2) Singapore banks involved and their customers who maintained joint accounts (with survivorship clauses), after the demise of one of joint holders to such accounts. The first defendant chose to widen the dispute by claiming that he was the sole beneficiary of his late mother's estate and therefore entitled to the monies in her Singapore bank accounts and so pleaded in his Defence. Determination of the heirs of Sitompul's estate should rightly have been decided by the Indonesian courts. The proper course of action should have been for the monies in the joint accounts to be paid out to the surviving account-holders be it the plaintiff, the first and or second defendants. Thereafter the recipient(s) of the monies would have to hold the monies as trustee(s) until such time as the Indonesian courts decide on who constituted the beneficiary or beneficiaries of Sitompul's estate and determine the division of the estate.

75. The first defendant however chose to confuse matters by bringing the issue of distribution of her estate before our courts, apart from his last minute volte face to stay the proceedings. Having so widen the dispute, the first defendant failed to convince me through Hutagulung's testimony, that he was the only rightful heir to his late mother's estate. The rulings of the Indonesian Supreme Court on the issue made it clear that sons and daughters (married or single) of Batak parents enjoy equal rights of inheritance to their parents' estates.

76. In accordance with the order of court made on 12 February 2001, I dealt with BOA's interpleader immediately after making the orders in this suit. The orders made were as follows:

Upon the death of Sitompul on 11 July 1999:

a. the legal title to the monies remaining in her first BOA account now held by [the first defendants solicitors] had vested in the first defendant as the surviving joint account holder;
b. the legal title to the monies remaining in her second BOA account now held by the [plaintiffs solicitors] had vested in the plaintiff as the surviving joint account holder;
c. the beneficial interest in the monies held by both solicitors belong to the estate of Sitompul and [the plaintiff, the first defendant and Indiana] being the children of Sitompul are the three (3) beneficiaries of her estate and each is entitled to one third-share in the monies;
d. the distribution of the monies shall follow the terms of the order set out in Suit No. 780 of 2000.

The first defendant has not appealed against the above orders.

Sgd:

LAI SIU CHIU
JUDGE