Syed Abbas bin Mohamed Alsagoff and Another v Islamic Religious Council of Singapore (Majlis Ugama Islam Singapura)
[2009] SGHC 281

Case Number : OS 1265/2008

Decision Date : 17 December 2009

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Andre Yeap SC, Kelvin Poon and Farrah Salam (Rajah & Tann LLP) for the applicants; Edwin Tong, Aaron Lee and Fazaliah bte Md Arsad (Allen & Gledhill LLP) for the respondent

Parties : Syed Abbas bin Mohamed Alsagoff; Syed Omar Bin Mohamed bin Ali Alsagoff — Islamic Religious Council of Singapore (Majlis Ugama Islam Singapura)

Muslim Law – Charitable trusts

Trusts – Trustees – Appointment

17 December 2009

Andrew Ang J:

Introduction

1 This case concerns an application by Syed Abbas bin Mohamed Alsagoff ("Syed Abbas") and Syed Omar bin Mohamed bin Ali Alsagoff (together "the Applicants") for:

(a) a declaration that the Applicants are trustees of the estate of Raja Siti bte Kraying Chanda Pulih ("the Testatrix"), pursuant to the terms of her will dated 29 November 1883; or

(b) alternatively, the appointment of the Applicants as trustees of the estate of the Testatrix ("the Raja Siti Trust") pursuant to s 42 of the Trustees Act (Cap 337, 2005 Rev Ed) ("Trustees Act").

2 At present, the Raja Siti Trust is administered by the Islamic Religious Council of Singapore (Majlis Ugama Islam Singapura) ("the Respondent") pursuant to s 58(2) of the Administration of Muslim Law Act (Cap 3, 1999 Rev Ed) ("AMLA").

Background

The facts

3 The Testatrix married Syed Ahmad bin Abdulrahman Alsagoff and had one son, Syed Mohamed bin Ahmad Alsagoff ("SMA Alsagoff"), and six daughters. She died in Mecca, Saudi Arabia, on 18 April 1891. By her will dated 29 November 1883 ("the Will"), the Testatrix created a trust out of her estate. The translation of the Will, with which I was furnished, reads as follows:

Will of Raja Siti Bte Kraying Chanda Pulih (Decd)

On the 30th day of 1301 as on 29.11.1883

I Raja Siti binte Kraying, widow, declare that all praises are to God (may the Blessings of God prevail upon) our Prophet Mohamed, peace be upon him, and all other prophets and angels and all those who worship God, and all pious men. As declared by God if my time comes and I die I shall be buried in the burial ground of Islam.

I direct my hereinafter executors to incur such expenditure on my funeral as is done in the case of good persons, such as giving out charity, reciting Thahleel and other things at the discretion of my executors.

My executors shall pay all dues owing by me to others and receive dues by others owing to me in Singapore and other places.

My executors shall distribute the income of rent of the houses of my estate, which I had inherited from the estate of my husband Syed Ahmad bin Abdulrahman Alsagoff, amongst my next-of-kin according to the laws of God and his apostle.

My executors shall create the rents of my own houses and of the houses of the estate of my mother Alhajjah Fatimah and after deducting all expenses, the balance shall be divided into two, one of which shall devolve on my next-of-kin and distributed according to the laws of God and his apostle. The other shall be made into a khairat in my name; first: - give to the mosque of my mother Alhajjah Fatimah $10/- per month to be spend on any useful thing in that mosque, remit to Makkah Almusharafa $10/- per annum, Madinah Almunawarah $10/- per annum and Taif $5/- per annum to be spent on food for those who break their fast in the mosques there or give as charity amongst the poor, and remit to Hadramaut $20/- per annum to be distributed as charity amongst the poor Sharifahs and the balance thereof my executors shall distribute amongst my poor relatives in Singapore or elsewhere or on other charitable deeds which my executors shall think will be beneficial to me.

I direct my executors to give to my male and female friends over the age of 50 $10/- each and those over the age of 10 $5/- each, those under the age of 10, $3/- each as per the names mentioned in the list which I have attached hereto.

The gold and diamond jewelleries which I had given to my children and grandchildren and others during my life shall not be claimed by my next-of-kin but shall remain their respective properties.

If my next-of-kin agree to sell the aforesaid houses which belong to me and which I had inherited from my mother Alhajjah Fatimah, my executors shall sell the same and divide the proceeds into two, one of which shall devolve on my next-of-kin according to the laws of God and his apostle and with the remaining share my executors shall purchase houses and have them converted into a perpetual wakaff in my name and shall not be sold or mortgaged.

My executors shall receive the rents thereof, deduct the expenses and the balance shall also be distributed among the charities stated above.

I appoint my son Syed Mohamed bin Ahmad Alsagoff to be the trustee and executor of the foregoing during his life time. After his death those who become his executors shall substitute him as executor and trustee. If the said executor or trustee or his successors is or are to appoint others as substituted trustees their number shall not be less than two.

Further, on the appointment of every new administrator, all matters connected with such

administratorship shall be handed over to the new administrators, even though the administrator or administrators is or are substituted, every one of the new administrators registered earlier and later than the other administrator (litteral) (each of them taking priority) according to their appointments and the handing over of the same shall obtain all the powers and authorities from the administration whom he succeeds.

In proof of the correctness and truth hereof I have hereunder set my hand of my own free will whilst of sound mind and in the presence of witnesses.

Signature of Raja Siti binte Ungku Kraying, widow.

Witnessed by: Sgd. Thaha bin Alwee Alsagoff

Witnessed by: Sgd. Abdulkader bin Abdulrahman Alsagoff

Witnessed by: Sgd. (the humble) Abdullah bin Mohamed Alsagoff

4 It ought to be noted that initially there was some dispute between parties over whether the words "trustee", "executor" and "executors" were capitalised or not. However, before me, the parties agreed to proceed on the assumption that none of these terms were capitalised. I reproduced the terms of the Will above on that basis.

1906 to 1915

5 Pursuant to the Will, SMA Alsagoff was the first executor and trustee of the Testatrix's estate. He died on 3 July 1906. By his will, SMA Alsagoff appointed Syed Omar bin Mohamed Alsagoff ("Syed Omar") and Syed Ali bin Mohamed Alsagoff ("Syed Ali") as executors of his estate. By that same Will, he appointed Syed Abdul Kader bin Abdul Rahman Alsagoff ("Syed Abdul Kader") and Syed Abdul Rahman bin Taha Alsagoff ("Syed Abdul Rahman") as the trustees of his estate.

6 Probate was granted to the executors of the estate of SMA Alsagoff on 3 September 1906. Syed Omar and Syed Ali, who were the executors of the estate of SMA Alsagoff, also assumed their position as executors and trustees of the Raja Siti Trust.

1915 to 1964

7 In 1915, Syed Omar and Syed Ali were discharged as executors of the estate of SMA Alsagoff after all its assets had been collected and called in. Following their discharge, the duty of distributing the assets belonging to SMA Alsagoff's estate fell to the trustees of the estate of SMA Alsagoff, namely Syed Abdul Kader and Syed Abdul Rahman. At the same time, the office of trustees for the Raja Siti Trust fell vacant, and remained so for a number of years.

8 According to the Applicant Syed Abbas, Syed Omar's son, Syed Ibrahim bin Omar ("Ibrahim") and Ibrahim's son, Syed Ali bin Ibrahim Alsagoff ("Ali"), made an application in 1958 for an Order of Court in Originating Summons No 103 of 1958 ("OS 103") to be appointed executors and trustees of the estate of the Testatrix. Their grounds were that they were the derivative executors of the Will of the Testatrix. It ought to be noted that the Order of Court that was made in OS 103 was not produced in these proceedings, apparently because it could not be located. Therefore, for the purposes of these proceedings, Syed Abbas's testimony regarding the order made had to be taken at face value. According to Syed Abbas, the court allowed the application subject to the following:

(a) All the immovable properties were to be vested in the name of the executors;

(b) The properties were to be sold and the proceeds of sale paid into court; and

(c) One half of the nett proceeds of the sale of the properties is for distribution to the kin of the Testatrix and the other half for investments pursuant to the directions contained in the Will of the said Testatrix.

These facts were not challenged.

1964 to 1983

9 Syed Abbas also gave evidence, to which the Respondent made no demurrer, that in 1964, Syed Mohamed bin Hassan Alsagoff ("Mohamed") and Syed Omar bin Abdulrahman Alsagoff ("Omar"), who were the then trustees of SMA Alsagoff's estate, brought a separate action seeking appointment as trustees of the Raja Siti Trust. However, as in the case of OS 103 mentioned above at [8], no court orders or written judgment pertaining to that action were produced in these proceedings.

10 Again taking Syed Abbas's evidence at face value, as a result of that action, Mohamed, Omar and Ali were appointed trustees of the Raja Siti Trust in place of Ibrahim who was removed as trustee. In that suit, it was also ordered that the assets of the Raja Siti Trust be sold and divided into two shares. One share was distributed amongst the Testatrix's next of kin or their respective estates. The other share was used to purchase some properties to constitute a *wakaf*. None of the materials produced in the present proceedings suggested anything to the contrary.

1983 to 2003

11 Mohamed died on 18 April 1981. One of the Applicants, Syed Abbas, replaced him as trustee of the SMA Alsagoff estate but was not formally appointed as trustee of the Raja Siti Trust. After Mohamed's death, none of the other trustees of the Raja Siti Trust took any steps to administer the Raja Siti Trust. In fact, Omar left Singapore to reside in Malaysia. In 1966, Omar was succeeded as trustee of the SMA Alsagoff estate by a man named Syed Mohamed bin Ali Alsagoff.

12 After Syed Mohamed bin Ali Alsagoff's death in 1977, the other Applicant in the present case, Syed Omar bin Mohamed bin Ali Alsagoff, took over as trustee of the SMA Alsagoff estate. However, like Syed Abbas, he was also not formally appointed as a trustee of the Raja Siti Trust. This meant that of the three trustees of the Raja Siti Trust appointed in 1964, only Ali was left. From 1983 to 1993, the beneficiaries of the Raja Siti Trust received no income from the Raja Siti Trust.

13 In a Deed of Appointment executed on 29 November 1991, Ali sought to be discharged as trustee. In his place, he appointed Syed Ali Redha Alsagoff ("Redha") and Syed Abu Bakar ("Abu Bakar") to be the trustees of the Raja Siti Trust. Subsequently, in 1999, Syed Ahmad Jamal bin Ali Redha Alsagoff ("Jamal") and Syed Anis bin Ali Redha Alsagoff ("Anis") were also trustees of the Raja Siti Trust.

14 Abu Bakar, Jamal and Anis resigned in writing as trustees of the Raja Siti Trust pursuant to an Order of Court dated 20 October 2003 (Redha having died prior to that on 21 February 1998). The Order of Court was made in Originating Summons No 1070 of 2003 in which MUIS had sought the removal of those trustees on the grounds, *inter alia*, that they had mismanaged the Raja Siti Trust. Since then, no trustees have been formally appointed to the Raja Siti Trust and the office has remained vacant.

15 Currently, the properties of the Raja Siti Trust are vested in MUIS and it has engaged Syed Abdullah Ibn Omar Alsagoff, who is the son of one of the Applicants, to perform the function of identifying beneficiaries, recommending deserving beneficiaries and assisting in the disbursement of *wakaf* moneys. However, the Applicants have brought this action seeking to be either declared or appointed trustees of the Raja Siti Trust in place of MUIS.

Issues

16 The issues before me were:

(a) Whether on an interpretation of the Will the Applicants were the rightful trustees of the Raja Siti Trust; and

(b) Whether, in the alternative, the Applicants ought to be appointed trustees of the Raja Siti Trust pursuant to s 42 of the Trustees Act.

My Decision

Interpretation of the Testatrix's Will

17 The first issue turned largely on the interpretation of a clause in the Will that read:

> I appoint my son Syed Mohamed bin Ahmad Alsagoff to be the trustee and executor of the foregoing during his life time. After his death those who become his executors shall substitute him as executor and trustee. If the said executor or trustee or his successors is or are to appoint others as substituted trustees their number shall not be less than two. ("Clause 10")

Essentially, the Applicants' argument was that the terms "executor" and "executors" in the Will, and especially in the second sentence of cl 10, ought to be read to mean "executor and trustee" and "executors and trustees" respectively, such that the Applicants who were trustees of the SMA Alsagoff estate would also by the terms of the Will be trustees of the Raja Siti Trust. The Respondent's submission was that the term "executor" should be read strictly and cannot be construed to mean "executor and trustee".

Rules of Construction

18 In *Goh Nellie v Goh Lian Teck* [2007] 1 SLR 453 at [61] ("*Goh Nellie*"), Sundaresh Menon JC was faced with the issue of whether the construction of the will in that case expressly prohibited the sale of the property in question such that the court had no discretion to order a sale pursuant to s 56(1) of the Trustees Act (at [57]). After considering existing textbooks and cases on the construction of wills, he highlighted a number of principles. One of those principles was that a court must construe the will as a whole and is not to adopt a clause-bound view of each part of the will. Therefore, if certain clauses are found in one area of a will but not in another, this cannot be readily dismissed unless the context indicates otherwise. Also, the intratextual use of words, phrases and language is often important, and a court should compare and contrast identical words used in different parts of the will so as to elucidate the most complete meaning or intention that should be ascribed to the words used (at [61]).

19 At cl 10 of the Will, the Testatrix uses a number of expressions in quick succession – "trustee and executor", "executors", "executor and trustee", "said executor or trustee or his successors" and "substituted trustees". Following the case of *Goh Nellie* ([18] *supra*), I find that the different usages

evidence an intention to distinguish between the groups of people denoted by these phrases. Furthermore, on an intratextual reading of the Will as a whole, the fact that the Testatrix, in the earlier portions of the Will, ascribed duties consistently and specifically to only the "executor" and not the "executor and trustee" suggests that the Testatrix appreciated that there was a difference between the persona and duties of an "executor" and those of a "trustee", and did not use the two interchangeably.

Legal differences between the role of the trustee and the executor

20 The Applicants sought to persuade me that the terms "trustee" and "executor" in cl 10 could be read interchangeably on the basis that the line between the functions of an executor and a trustee is "very thin". However, the function of the executors, which is usually to get in the estate and to clear it of debts, duties and testamentary expenses, is distinct from the usual function of the trustee to distribute the assets according to the will (see, *eg*, R F D Barlow *et al*, *Williams on Wills* vol 1 (Butterworths, 9th Ed, 2008) at para 27.15 ("*Williams on Wills*"); Clive V Margrave-Jones, *Mellows: The Law of Succession* (Butterworths, 5th Ed, 1993) at para 22.5). In my view, the existence of a distinction between the two functions, however subtle, goes to show that there *is* an appreciable difference between the two. This militates against using the two terms interchangeably as the Applicants advocated, unless clearly supported by discernible testamentary intent in the Will itself.

21 In similar vein, the Applicants submitted that "trustee" and "executor" could be read interchangeably on the basis that once the pre-distribution formalities are completed, the executors will become trustees holding for the beneficiaries. They relied on *In re Cockburn's Will Trusts* (1957) Ch 438 at 439 ("*re Cockburn's*") for support for that proposition. However, that proposition remains true only in so far as the testator or testatrix has not named separate persons as trustee and executor respectively. In *re Cockburn's*, the three persons named as executors in the deceased's will were also named as trustees, and there was a clear declaration that references to his trustees should include those three "executors and trustees". No such declaration exists in the Will before me.

22 The Applicants also submitted that the Testatrix's choice, to ascribe to the executor duties commonly belonging to the trustee (*eg*, to distribute rental income and give specified sums to her friends), evidenced a layman's confusion regarding the difference between a trustee and an executor. However, in my view, it could just as easily be said that the Testatrix intended to ascribe some of the duties commonly belonging to the trustee to the executor in this instance. It does not do violence to the Will to regard the Testatrix as having ascribed these duties to the executor, especially if the collection of assets is likely to take a long time. The testamentary intent might have been for the executor to be given some powers of distribution so that beneficiaries do not have to wait indefinitely for the executor to finish gathering the other assets before receiving the gifts left to them. As stated in *Goh Nellie* at [60] ([18] *supra*), the meaning of a word used in a will does not need to correspond to its ordinary or legal usage so long as the context of the will clearly excludes the usual meaning of that word. Therefore, in the absence of clear testamentary intention one way or another, I found the arguments on this point to be inconclusive.

Workability of the interpretation adopted

23 The Applicants then submitted that the Testatrix could not have intended for the word "executor" to be used in the strict literal sense because it would create a lacuna in the Will. They suggested that by confining the term "executor" to a strict reading, the lacuna that would be created would render the Will unworkable. Their reasoning was that if at the time of the Testatrix's death SMA Alsagoff had already died and the assets of his estate had already been called in, such that his estate was being administered only by his trustees and not his executors, the Raja Siti Trust would

have been left without a trustee.

24 I did not accept the Applicants' submissions on this point. First, following the common law rule as laid down in *Hudson v Hudson* (1737) 1 Atk 460, 26 ER 292, and since statutorily codified in s 13 of the Probate and Administration Act (Cap 251, 2000 Rev Ed), even if no executor had survived the Testatrix, the Will would nonetheless have remained valid although her wishes and instructions would have had to be carried out by an administrator appointed by the court, who would have then administered the estate with the Will annexed (see G Raman, *Probate and Administration in Singapore and Malaysia* (LexisNexis, 2nd Ed, 2005) at 42). Second, notwithstanding the above, in the event that SMA Alsagoff passed away, provision had already been made in the Will for his executors to succeed him. Therefore, even after the assets of his estate had been called in, such that his estate was being managed actively by trustees only, his executors would have remained competent to take out an application for probate and to act as executors and trustees of the Raja Siti Trust. As pointed out in *Williams on Wills* ([20] *supra*) at para 25.9:

> … while the powers of the executor over property vested in him may cease so that he becomes what may be called a bare executor, he still remains such and is available, during his life (and after his death any executor by [*sic*] representation is available) to receive a reversionary interest in property which falls in many years after the death of the testator, or to exercise some power of appointment of new trustee vested in the testator [*sic*], or for any other purpose for which representation of the testator's estate is required.

No lacuna would be created out of the transition of SMA Alsagoff's estate from executorship to trusteeship. Third, s 25(1) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("Civil Law Act") provides that an executor of a sole or last surviving executor of a testator is the executor of that testator. This means that even if SMA Alsagoff had died ahead of the Testatrix and all his assets had already been called in so that his estate was being administered only by trustees, the proper "trustees and executors" of the Raja Siti Trust would have been those that had served as executors of his estate. If those persons were all deceased, the executor of a previous executor who had passed on would be the next legitimate trustee and executor of the Testatrix's Will (and the Raja Siti Trust) and so on and so forth unless the chain is otherwise broken by events such as intestacy.

Lineage

25 The Applicants also tried to advance the argument that the Testatrix must have intended for her son's estate and the Raja Siti Trust to be administered by the same persons ("SMA Alsagoff's lineage", as termed by the Applicant) and, in order to give effect to that intention, the word "executor" must be read interchangeably with "trustee" in the Will. The Applicants argued that if the terms are not read interchangeably, then the administration of the Raja Siti Trust would be divorced from that of SMA Alsagoff's estate and, instead, be administered by a succession of executors who may not have any direct relation to SMA Alsagoff or his estate ("the executor's lineage"). The Applicants submitted that there was no reason why the Testatrix would prefer to have the Raja Siti Trust be administered along the executor's lineage rather along SMA Alsagoff's lineage.

26 While this argument had more appeal than the others presented by the Applicants, I was not able to accept this submission either because as a rule of construction an interpretation should not be adopted that would be diametrically opposite to the literal and express meaning of a term. As observed by Parke J in *Doe Dem Joseph Gwillim v Samuel Gwillim* (1833) 5 B & Ad 122 at 129, 110 ER 737 at 740:

> In expounding a will, the Court is to ascertain, not what the testator actually intended, as

contradistinguished from what his words express, but what is the meaning of the words he has used.

The Testatrix has chosen specific words and the Will should be interpreted according to those words instead of according to an inchoate intention that is inconsistent with the language of the Will.

Concluding remarks on the issue of the interpretation of cl 10

27 Having considered the foregoing, I came to the decision that the term "executor" in the Will ought not to be read interchangeably with the term "trustee". My interpretation of cl 10 is set out below.

28 By the first sentence, the Testatrix appointed her son, SMA Alsagoff to be both trustee and executor of the Will during his lifetime.

29 By the second sentence, the Testatrix provided that after the death of SMA Alsagoff, the executors (and not the trustees) of his estate would succeed him in his capacity as the executor and trustee of the Will. By virtue of cl 10 read with s 25 of the Civil Law Act, when the last of the executors SMA Alsagoff named died, the executor of that deceased person's estate would become the next executor and trustee of the Raja Siti Trust and so on and so forth.

30 The third sentence posed the greatest obstacle to arriving at a consistent interpretation of the Will. On the assumption that no error was made in the translation of the Will, the issue to be resolved was whom the Testatrix was referring to in the third sentence by the words "the said executor or trustee". On one hand, the word "said" suggests that the phrase "executor or trustee" is indistinguishable from the "executor and trustee" mentioned in the second sentence of cl 10, *ie*, SMA Alsagoff in his capacity as executor and trustee. On the other hand, the contradistinction between the reference to "executor *and* trustee" in the second sentence and "executor *or* trustee" in the third sentence favours the interpretation that in the latter phrase the Testatrix was consciously differentiating between role of the "executor" and that of the "trustee". Despite the appearance of inherent contradiction, however, in my view, the matter could be resolved without violence to the Will by taking the following interpretation:

(a) The second sentence refers conjunctively to "executor *and* trustee" because SMA Alsagoff and the executors of his will are entitled under the terms of the Will to fill *both* roles.

(b) The third sentence refers disjunctively to "executor *or* trustee" because it was anticipated that at the time of the appointment of substituted trustees, the estate may have already been called in, and SMA Alsagoff (or his successors) could well have been managing the Testatrix's estate actively only in the capacity of trustee *rather than that of executor*, even though he and his successors remain bare executors as discussed at [24] above. Possibly, the wording "executor or trustee" was meant to forestall vexatious questions regarding whether the power to appoint substituted trustees had been conferred on the "executor" or the "trustee", even though both roles may have been filled by the same person.

On that reading, by the third sentence of cl 10, the Testatrix gave SMA Alsagoff (regardless of whether he was acting as executor or trustee) and the executors of his will (*ie*, his successors) the power to appoint other persons as substituted trustees provided there are at least two substituted trustees at a time. In arriving at this position, I took into account the general principle that in construing a will, the words and expressions used ought to be taken in their ordinary, proper and grammatical sense (see, *eg*, *In re Chapman's Settlement Trusts* [1977] 1 WLR 1163). For that

reason, I was reluctant to assume in cavalier fashion in the absence of persuasive evidence that the words "and" and "or" could be taken interchangeably.

31 Following the interpretation I have adopted above, I held that the Applicants, who are trustees (but not the executors) of SMA Alsagoff's estate, are not trustees of the Raja Siti Trust by the terms of the Will.

Section 42 of the Trustees Act

32 Having held that the Applicants are not trustees by the terms of the Will, I then had to consider whether they ought to be appointed trustees under s 42 of the Trustees Act which reads as follows:

> **Power of court to appoint new trustees**
>
> **42**. — (1) The court may, *whenever it is expedient* to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable to do so without the assistance of the court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, although there is no existing trustee.
>
> (2) Without prejudice to the generality of subsection (1), the court may make an order appointing a new trustee in substitution for a trustee who is —
>
> (a) sentenced to a term of imprisonment;
>
> (b) a mentally disordered person or a person of unsound mind;
>
> (c) a bankrupt; or
>
> (d) a corporation which is in liquidation or has been dissolved.
>
> (3) An order made under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.
>
> (4) Nothing in this section shall give power to appoint an executor or administrator.
>
> [emphasis added]

33 The submissions the Applicants made in relation to this issue were twofold. First, they sought to persuade me that the court was competent to appoint them as new trustees of the Raja Siti Trust pursuant to the provision set out above at [32]. Second, they argued that it was expedient to appoint them as new trustees in place of the Raja Siti Trust because the Respondent had mismanaged the trust and had put itself in a position of conflict vis-à-vis the trust.

34 The Respondent's first submission in response was that pursuant to s 57 of the Trustees Act, the Applicants had no *locus standi* to make the application to be appointed new trustees. Second, it argued that the Applicants ought not to be granted the appointment they sought because that would go against parliamentary intention regarding how *wakaf* were to be managed, as expressed in s 58 of AMLA. Third, it alleged that the appointment would not be expedient as required under s 42 of the Trustees Act, as it would create a conflict of interest on the part of Syed Abbas, one of the

Applicants, who is also the chairman of the management committee of the Alsagoff Arab School.

Locus Standi

35 I first considered the question of whether the Applicants had *locus standi* to seek the appointment.

36 Section 57(1) of the Trustees Act states as follows:

> An order under this Act for the appointment of a new trustee or concerning any interest in land, stock or thing in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock or thing in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

A plain reading of this provision suggests that only (a) a person beneficially interested; or (b) a person duly appointed trustee, may apply to the court for the appointment of a new trustee. This interpretation was endorsed in *Syed Salim Alhadad v Dickson Holdings Pte Ltd* [1997] 2 SLR 257 at [30] where, with respect to limb (a), Warren LH Khoo J explicitly rejected an argument made by counsel that persons not beneficially interested could nonetheless make an application to court to appoint new trustees under the Trustees Act. The judge reasoned that if anyone, whether beneficially interested or not, might apply, it was strange that the provision only mentioned a person beneficially interested.

37 Since the Applicants in the present case are not beneficiaries of the Raja Siti Trust, they have no *locus standi* under limb (a) to ask to be appointed trustees under s 42 of the Trustees Act. Limb (b) has no application in this case since if they were duly appointed trustees, they would not need to seek appointment by the court.

The interaction of the Trustees Act with AMLA

38 Having decided that the Applicants have no *locus standi* to bring an application under s 42 of the Trustees Act, I do not need to consider the rest of the Applicants' submissions in regard to this alternative ground. However, I would add that even if I found that the Applicants had *locus standi*, I still would not have granted the appointment that they sought.

39 In *LS Investment Pte Ltd v Majlis Ugama Islam Singapura* [1998] 3 SLR 754, the Court of Appeal considered how *wakaf* were to be administered in light of the AMLA provisions in force. It observed at [36] that the effect of s 58(2) of AMLA was that the true trustee of all *wakaf* is the Respondent in whom (by virtue of s 59 of AMLA) all *wakaf* property vests. A trustee named in an instrument setting up a *wakaf* is not a trustee in the English sense of the word, but a *mutawalli*, *ie*, an administrator or a manager. By s 58(2) of AMLA, Parliament clearly signalled its intention that the Respondent should oversee the administration of all *wakaf*. Section 58(2) provides:

> *Notwithstanding any provision to the contrary in any written law or in any instrument or declaration creating, governing or affecting the same*, the Majlis shall administer all wakaf, whether wakaf 'am or wakaf khas, all nazar am, and all trusts of every description creating any charitable trust for the support and promotion of the Muslim religion or for the benefit of Muslims in accordance with the Muslim law to the extent of any property affected thereby and situate in Singapore. [emphasis added]

In other words, the Respondent is empowered by AMLA to administer all *wakaf* notwithstanding any

provision to the contrary in the Trustees Act. To invoke the Trustees Act to seek the removal of the Respondent from a position that it has been statutorily appointed to would be inconsistent with parliamentary intention.

40 At a late stage in the proceedings before me, the Applicants changed tack and said that they were not seeking the removal of the Respondent as trustee, but merely seeking to be appointed as *mutawallis* pursuant to s 42 of the Trustees Act. In essence, their submission was that the statutory provision made the court competent to appoint *mutawallis* to a Muslim *wakaf*. I did not agree.

41 First, the "trust" in the Trustees Act undoubtedly refers to that under English law as received in Singapore and does not extend to encompass the Muslim *wakaf*. For example, Part III of the Trustees Act gives the trustee power to sell trust assets, which *mutawallis*, in whom trust property does not vest, cannot do without the approval of the Respondent. Similarly, s 35 of the Trustees Act allows the court to make an order vesting interests in land held in trust in such persons as it may direct. However, under AMLA, it is in the Respondent alone that title to trust property will vest. The concepts of "trust" under the Trustees Act and "*wakaf*" in AMLA are clearly distinct. It is untenable that certain provisions in the Trustees Act are to be selectively applied to facilitate the appointment of *mutawallis*, while others are ignored. It would be anomalous to make an appointment of a *mutawalli* under the Trustees Act and yet say that none of the powers conferred by that legislation could be enjoyed by the appointee.

42 Second, there is no need to adopt a strained reading of the Trustees Act to appoint a *mutawalli* to a *wakaf* when s 58(4) and (5) of AMLA already confer power on the Respondent to appoint and remove *mutawallis* and to remove existing trustees from a *wakaf*:

> **Wakaf or nazar am**
>
> 58. — (4) The trustees of the wakaf or nazar am appointed under the instrument creating, governing or affecting the same shall, subject to the provisions of this Act, manage the wakaf or nazar am but the Majlis shall have power to appoint mutawallis, and for such purpose to remove any existing trustees, where it appears to the Majlis that —
>
> (a) any wakaf or nazar am has been mismanaged;
>
> (b) there are no trustees appointed to the management of the wakaf or nazar am; or
>
> (c) it would be otherwise to the advantage of the wakaf or nazar am to appoint a mutawalli.
>
> (5) *The Majlis may at any time remove any mutawalli appointed by it and appoint another in his place*. [emphasis added]

43 For the reasons given above at [39]–[42], I took the view that the Trustees Act does not empower a court to appoint *mutawallis* to a Muslim *wakaf*.

Expediency

44 The term "expedient" means what will facilitate matters (see *In re Firth* [1912] 1 Ch 806 at 809). Even if the Applicants had *locus standi* to seek appointment as new trustees, I would not have found the appointment to be expedient because it goes against the legislative intention under AMLA that the Respondent should oversee and thus facilitate the administration of all *wakaf*. However, in the light of my decision in regard to *locus standi*, I will not embark on a lengthy discourse on this

point nor examine in minute detail whether the Respondent or the Applicants are in a position of conflict of interest vis-à-vis the Raja Siti Trust. I also will not go into the points relating to the alleged mismanagement of the Raja Siti Trust.

Conclusion

45 For the reasons above, I dismissed the action. However, taking the circumstances as a whole, I made no order as to costs except that MUIS's costs are to be borne by the estate.