IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 123

Suit No 152 of 2019
(Registrar's Appeal Nos 6 and 7 of 2020; Summons No 1890 of 2020)

Between

Fauziyah Binte Mohd Ahbidin
(Executrix of the Estate of
Mohamed Ahbideen Bin
Mohamed Kassim @ Ahna
Mohamed Zainal Abidin Bin
Kassim)

… *Plaintiff*

And

(1) Singapore Land Authority
(2) Collector of Land Revenue
(3) Attorney-General of the
Republic of Singapore

… *Defendants*

JUDGMENT

[Civil Procedure] — [Striking out]
[Civil Procedure] — [Appeal] — [Adducing fresh evidence]
[Land] — [Compulsory acquisition] — [Interest in land] — [State land]
[Muslim Law] — [Charitable trusts]

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Fauziyah bte Mohd Ahbidin (executrix of the estate of Mohamed Ahbideen bin Mohamed Kassim (alias Ahna Mohamed Zainal Abidin bin Kassim), deceased)
v
Singapore Land Authority and others

[2020] SGHC 123

High Court — Suit No 152 of 2019 (Registrar's Appeal Nos 6 and 7 of 2020 and Summons No 1890 of 2020)
Audrey Lim J
11 June 2020

17 June 2020 Judgment reserved.

Audrey Lim J:

Introduction

1 The Defendants had applied to strike out the Plaintiff's Statement of Claim in this Suit ("Suit 152"), on the grounds that it disclosed no reasonable cause of action; is scandalous, frivolous or vexatious; or is otherwise an abuse of the process of the court. The assistant registrar ("AR") struck out the claim on the basis that it was unsustainable. The Plaintiff appealed against the decision in its entirety ("RA 6") and the Defendants appealed against the decision not to strike out the Plaintiff's claims on the other grounds that they relied on ("RA 7"). I will refer to RAs 6 and 7 collectively as "the RAs".

Background

2 The Plaintiff, Fauziyah binte Mohd Ahbidin, is the only child of one Zainal and sole executrix of his estate ("Zainal's Estate"). Zainal is the only child of one Kassim. The Defendants are the Singapore Land Authority ("SLA"), Collector of Land Revenue ("Collector") and Attorney-General respectively.

3 The dispute concerns the compulsory acquisition of four plots of land ("the Land").

The 1920 and 1921 Deeds and wakaf

4 Kassim acquired the fee simple in the Land in 1919. In January 1920, Kassim, Oona Said, Pana Shaik and Ibrahim entered into an Indenture of Deed ("1920 Deed") which provided for the following:

(a) Kassim, Oona Said and Pana Shaik held the Land as tenants-in-common in the ratio of 21:3:2 respectively.

(b) Kassim, Oona Said and Pana Shaik conveyed the Land to Kassim and Ibrahim as joint tenants, "to be held by them upon trust for the purposes of a public burial ground for Mohamedans only".

(c) Kassim and Ibrahim and their survivors (the trustees) are to manage or superintend the management of the Land "upon trust" and for it "to be appropriated and used by the general public of the Mohamedan community in Singapore as a public burial ground for Mohamedans under the name of Bukit Wakaff Siglap, according and subject to such rules and regulations as may from time to time be prescribed by [them]".

5 On 30 April 1921, Kassim, Oona Said, Pana Shaik and Ibrahim entered into another Deed of Settlement ("1921 Deed") which stated that the Land "shall be a charitable property according to the custom or usage of Tanah Wakaf". The effect of the 1920 Deed and 1921 Deed ("the Deeds") was to establish a *wakaf* under Syariah law.

The 1932 Will

6 Around 9 December 1932, Kassim allegedly made a will ("1932 Will") setting out his intention to benefit his descendants under the *wakaf* over, *inter alia*, the Land. In particular, the 1932 Will directed for the following to be done:

(a) Divide the nett income of the endowment (including the Land) into five shares, two shares to be given to Kassim, and house No. 76 Changi Road which Kassim and his descendants shall occupy rent free.

(b) If Kassim dies, his share shall devolve to Zainal.

(c) The other three shares shall go towards the payment of wages of the employees of the mosque, burial ground and school and towards the costs of repairing the endowed properties.

Kassim's death in 1935

7 The Plaintiff pleaded in a proposed amendment to the Statement of Claim ("Proposed SOC") (see further at [14] below) that under Muslim law or the *Hanafi* school of Muslim law ("*Hanafi* school"), Kassim did not lose his beneficial interest in the Land by the Deeds, and any testamentary *wakaf* created (*eg*, by the 1932 Will) was effective over only one-third of the Land. Hence Kassim and Ibrahim continued to hold two-thirds of the Land as joint tenants.

8 The Plaintiff also pleaded that, as Ibrahim predeceased Kassim, Kassim held the sole interest in two-thirds or the whole of the Land. Kassim died in 1935 and was survived by his wife, Mymon, and Zainal. In 1936, Mymon and Kassim's father-in-law applied for a grant of letters of administration on Kassim's estate with the 1932 Will annexed. There was no evidence that the grant was obtained. However, Zainal was allegedly unaware of the 1932 Will then, so he applied for and obtained a grant of letters of administration to Kassim's estate on 1 October 1962 ("1962 Grant of LA").

Subsequent vesting of the Land and compulsory acquisition

9 In April 1959, Zainal obtained an order of court in OS 33/1959 ("1959 Order") for, *inter alia*, the Land to vest in four individuals, including Zainal, as trustees for the same ("the 1959 Order trustees").

10 In 1962, pursuant to an order ("1962 Order") made under s 4 of the Muslim and Hindu Endowments Ordinance (Cap 271, 1955 Ed) ("MHE Ordinance"), the Land was vested in the Muslim and Hindu Endowments Board ("MHEB"). The 1962 Order was published in the Government Gazette and duly registered in the Registry of Deeds. In 1968, the Land was vested in the Majlis Ugama Islam Singapura ("MUIS") by operation of s 6 of the Administration of Muslim Law Act 1966.

11 Around 27 November 1987, a notification was published in the Gazette that the Land, at that time a Muslim cemetery, was required for "general development" pursuant to s 5 of the Land Acquisition Act (Cap 152, 1985 Rev Ed) ("LAA") ("the Acquisition"). The State took possession of the Land on 16 February 1989, but no development of the Land has commenced.

Grant of probate for Zainal's Estate in 2014 and subsequent events

12 Mymon passed away in 1945. Zainal passed away on 29 April 2011 and, according to the Plaintiff, left his share of the inheritance of Kassim's estate to her. The Plaintiff extracted grant of probate on 30 May 2014 and claimed to have subsequently discovered around 2016 that legal title to the Land had become registered in the State.

13 On 30 May 2018, the Plaintiff wrote to SLA alleging that the Land was "Ancestral Land (of [Zainal] and for his immediate family rights) and must be returned unconditionally". In June 2018, at a meeting with the National Environment Agency, the Plaintiff reiterated her claim and stated that no notice of Acquisition had been given to her family. The Plaintiff subsequently wrote to SLA essentially to reiterate the same and demanded that SLA take steps to restore the Land to the Plaintiff. SLA replied in January 2019 to state that there was no basis for the Plaintiff's allegations.

Suit 152

14 On 1 February 2019, the Plaintiff commenced Suit 152. I set out the crux of her case, based on the Proposed SOC. The Defendants' counsel, Mr Khoo, agreed to the court dealing with the matter having regard to the Proposed SOC, to save time and costs, and that he would make his arguments in the RAs on that basis and to persuade the court that leave to amend the Proposed SOC should nevertheless be refused.

15 The Plaintiff pleaded that Kassim was a Muslim born in India and/or a Muslim of Indian descent. Under Muslim law or the *Hanafi* school, the donor of a *wakaf* retains the beneficial interest in the property that is the subject of the *wakaf* and thus Kassim did not lose his beneficial interest in the Land by the

1920 or 1921 *wakaf*. The beneficial interest is lost either when the court declares the *wakaf* as irrevocable or by the creation of a testamentary *wakaf* by will. Further, under Muslim law or the *Hanafi* school, a *wakaf* is revocable and was revoked by the 1932 Will. However, a testamentary *wakaf* is effective only over one-third of the testator's properties at the time of his death. Thus, the *wakaf* purportedly created over the other two-thirds of the Land by the Deeds was invalid, and Kassim and Ibrahim continued to hold the Land as joint tenants.

16 The Plaintiff pleaded that the 1962 Order was ineffective or *ultra vires* in respect of the whole or two-thirds of the Land as this was not an "endowment" within the MHE Ordinance and title in the Land did not vest in the MHEB. Further, the 1962 Order was made in breach of the rules of natural justice as the 1959 Order trustees, Kassim's descendants and the administrators of Kassim's estate did not have the opportunity to be heard prior to the Order being made and were not notified that the Order had been made. In addition, the MHEB no longer existed when notice of the Acquisition was served on it. Notice of the Acquisition was not, pursuant to s 8 of the LAA, served on MUIS, the 1959 Order trustees, Kassim's descendants or Zainal. None of Kassim's descendants were aware of the Acquisition until 2016. Prior to January 2019, the State did not notify Kassim's descendants that the Land constituted State land.

17 As Kassim's estate is interested in two-thirds of the Land and no valid notice had been given to the estate in accordance with the LAA, the Acquisition was invalid. Moreover, no compensation for the Acquisition has been paid to any of Kassim's descendants. The Plaintiff thus sought a declaration that the Acquisition was defective and void ("Acquisition Challenge Claim") and that title to the Land should be vested in Zainal's Estate ("Title Claim").

Hearing below

18 Before the AR, the Plaintiff's then counsel (Mr Koh) stated that the Plaintiff would withdraw the Acquisition Challenge Claim as it should be dealt with by way of judicial review. Mr Koh confirmed that the Plaintiff would not object to striking out parts of the Statement of Claim ("SOC") insofar as they related to the Acquisition Challenge Claim, and the arguments proceeded on the basis of the Title Claim.

19 Mr Koh submitted that the Plaintiff belonged to the *Hanafi* school and "[a]ll the past cases appear to have been considered in the Singapore courts in light of the *Shafi'i* school of thought, not the *Hanafi* school of thought". The argument that Kassim retained two-thirds of the interest in the Land, based on the *Hanafi* school, was only subsequently pleaded in the Proposed SOC. Further, Mr Koh submitted that the Plaintiff's claim was not time-barred as there was no laches or acquiescence as Zainal did not have sufficient knowledge when he applied for the 1959 Order.

20 The AR struck out Suit 152 in its entirety. In particular, the Title Claim was plainly and obviously unsustainable. The AR found "clear and compelling historical evidence" that Kassim belonged to the *Shafi'i* school of Islam, and in any case, it was undisputed that the *wakaf* was purportedly established by Kassim in his lifetime, and there was no evidence that suggested that "a *Hanafi* Muslim's freedom under Islamic law to make an *inter vivos* disposition of property is to any extent more limited than that enjoyed by a *Shafi'i* Muslim". The AR rejected the Defendants' other grounds for striking out Suit 152, and found it unnecessary to deal with the time bar issue.

Summons No. 1890 of 2020 – Leave to adduce fresh evidence

21 The Plaintiff sought to adduce the following fresh evidence ("Fresh Evidence") for the RAs via Summons No. 1890 of 2020 ("SUM 1890"):

(a) The expert opinion of one Dr Zamro, to address the issue of whether Kassim (and by extension Kassim's estate) retained a beneficial interest in the Land, and in particular pertaining to the whether a donor of *wakaf* land can retain ownership over the land and whether and how a donor can revoke or vary a *wakaf*, according to the *Hanafi* school.

(b) The affidavit of one Siddiqe, who apparently frequented the Land since the 1970s, to address the Defendants' allegations that "MUIS and various government agencies were openly managing and maintaining the Land for decades, and wide publicity was given to their activities", and to show that he was unaware that any notice had been placed at the Land to inform that it would be or became acquired.

(c) Paragraphs 8 to 13 of the second affidavit of one Farit and the exhibits in it (including the Proposed SOC), to address the issues of whether Kassim belonged to the *Hanafi* school; whether Zainal or the Plaintiff had unconscionably delayed the bringing of Suit 152; and whether there was an abuse of process or a "sham" by the Plaintiff.

22 The Defendants submitted that the Fresh Evidence should not be admitted because the requirements in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*") were not satisfied.

The applicability of Ladd v Marshall

23 The three requirements in *Ladd v Marshall* are well established. The party seeking to adduce fresh evidence must fulfil the "non-availability requirement", the "relevance requirement" and the "reliability requirement" (*Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341 ("*Anan Group*") at [21]).

24 In an application to adduce fresh evidence on appeal, the court should evaluate the characteristics of the proceedings below. Where an appeal is against a judgment after trial or a hearing with the characteristics of a trial, the court should apply the *Ladd v Marshall* requirements with their "full rigour". Where an appeal is an interlocutory appeal or one arising out of a hearing which lacks the characteristics of a trial ("interlocutory end of the spectrum"), the court remains guided by the *Ladd v Marshall* requirements but is "not obliged to apply [them] in an unattenuated manner". For a case falling in between, including an appeal against a judgment after a hearing of the merits but which does not bear the characteristics of a trial, it is for the court to determine the extent to which the non-availability requirement should be applied strictly: see *Anan Group* at [35], [57]–[58].

25 In *Park Regis Hospitality Management Sdn Bhd v British Malayan Trustees Ltd and others* [2014] 1 SLR 1175 ("*Park Regis*"), which concerned a registrar's appeal against a striking out application, the court held (at [29]) that the case fell within the interlocutory end of the spectrum and there was thus a wide discretion in deciding whether to allow the further evidence to be adduced. Similarly, in *WBG Network (S) Pte Ltd v Sunny Daisy Ltd* [2007] 1 SLR(R) 1133, concerning a registrar's appeal to a judge in chambers on a summary

judgment application, the Court of Appeal held (at [14]–[15]) that the judge was not obliged to apply the requirements in *Ladd v Marshall*.

26 The Defendants submitted that the *Ladd v Marshall* requirements should be applied strictly as the present case involved an appeal against a judgment after a hearing of the merits. In my view, as in *Park Regis*, this case lies on the interlocutory end of the spectrum. The judge in chambers hearing a registrar's appeal exercises confirmatory, rather than appellate, jurisdiction and rehears the case afresh. He is thus entitled to exercise an unfettered discretion, including on the admissibility of fresh evidence: *Lassiter Ann Masters v To Keng Lam (alias Toh Jeanette)* [2004] 2 SLR(R) 392 at [10]. The RAs concern a striking out application involving a summary process with no oral evidence, and do not bear the features of a trial.

Whether the Fresh Evidence should be admitted

27 Having considered the matter in light of the Proposed SOC, I allowed the Fresh Evidence, except for Siddiqe's affidavit, to be admitted.

28 The non-availability requirement should be relaxed, as this concerned a striking out application and falls within the interlocutory end of the spectrum. I turn to assess the relevance and reliability requirements.

29 I was satisfied that Dr Zamro's report should be admitted. The Proposed SOC pleads that Kassim was a Muslim born in India and/or a Muslim of Indian descent, and that Kassim continued to retain at least two-thirds of the Land because of how the *Hanafi* school operates in relation to the donor's beneficial interest in *wakaf* land (see [15] above). Dr Zamro's report provided an opinion on the *Hanafi* school in relation to a donor's beneficial interest in *wakaf* land, which may support the Plaintiff's case that the *wakaf* purportedly created over

two-thirds of the Land was invalid either because Kassim did not lose that interest by the Deeds or because the *wakaf* was revoked by the 1932 Will. The Defendants' submission that Dr Zamro's affidavit is irrelevant as there was no evidence that Kassim belonged to the *Hanafi* school is beside the point – this issue is a factual inquiry for the court to consider. I also found Dr Zamro's report to be apparently credible, considering his credentials in the area of Muslim law.

30 As for Farit's second affidavit and the exhibits in it, I found the evidence would be relevant to the Title Claim. Farit attested that Kassim was born in South India and exhibited an excerpt from MUIS' website (to show that Kassim was from India) to support the Plaintiff's submission that Kassim belonged to the *Hanafi* school. Farit's evidence would be relevant to determine if leave should be granted to amend the SOC. I also did not find Farit's evidence to be inherently incredible. Thus I allowed Farit's evidence to be admitted.

31 However, I disallowed Siddiqe's affidavit to be admitted as I was not satisfied as to its relevance. If his evidence was to show whether the Plaintiff lacked *bona fides* in commencing Suit 152, that issue should be assessed based on her state of mind, not Siddiqe's. Siddiqe's affidavit is also largely irrelevant to whether the Title Claim is legally or factually sustainable.

Parties' submissions in the RAs

Plaintiff's submissions

32 The Plaintiff's new counsel, Mr Wijaya, clarified that in the Proposed SOC, the Plaintiff is seeking a "declaration that the whole, two-third[s] or such portion [of] the title to the [Land] as this Honourable Court adjudges was vested in the estate of Kassim". Mr Wijaya also confirmed that the Plaintiff would not challenge the AR's decision to strike out the Acquisition Challenge Claim.

33 Mr Wijaya submitted that there is a serious issue to be tried as to whether Kassim's estate had a beneficial interest in the Land before the 1962 Order.

(a) First, there is an issue of whether the *wakaf* established by the Deeds was a valid *inter vivos* disposition of only up to one-third of Kassim's property. The current law, under s 60(1) of Administration of Muslim Law Act (Cap 3, 2009 Rev Ed) ("AMLA"), is that, after 1 July 1968, a Muslim person cannot create a *wakaf* of more than one-third of his property, whether the *wakaf* is created *inter vivos* or *via* a testamentary disposition. There is nothing to suggest that s 60(1) of AMLA was intended to depart from Muslim law and Malay custom.

(b) Second, there is an issue of whether Kassim belonged to the *Hanafi* school; and if so, whether he retained at least two-thirds beneficial interest in the Land as the 1932 Will revoked the Deeds which in turn created a testamentary *wakaf* of only one-third of Kassim's estate. If so, the beneficial interest in two-thirds of Kassim's estate (including the Land) remained in his estate just before the 1962 Order. It remains open to a Singapore court to decide whether Abu Hanifa's conception of *wakaf* should be accepted in Singapore.

34 Next, there is a serious issue to be tried as to whether Kassim's estate retained a beneficial interest in the Land before the Acquisition. This includes whether title to the Land had been validly transferred to MHEB, and if not, the same could not have been validly transferred to MUIS.

35 Additionally, there is a serious issue as to whether the Title Claim was time-barred or whether laches applied. Section 9(1) of the Limitation Act (Cap 163, 1996 Rev Ed) ("LA") was not applicable as the Plaintiff was not claiming to recover any land, but seeking a declaration as to the beneficial interest in the

Land before the 1962 Order or before the Acquisition. Section 22(1) of the LA was also not applicable as the Plaintiff was not making a claim of the nature stated therein. The Plaintiff also disputes whether Zainal knew that he had a beneficial interest in the Land; whether he knew of the 1932 Will; and whether he knew, or would have discovered with reasonable diligence, that title to the Land had vested in MHEB, MUIS, and then the State. Other than the assertion that relevant witnesses and evidence may be lost through the effluxion of time, which was not attributable to Zainal's or the Plaintiff's fault, the Defendants did not show any other alleged prejudice it would suffer if the Plaintiff were allowed to litigate the Title Claim.

36 Finally, the Title Claim was not an abuse of the court's process. The Plaintiff had not changed her position on facts within her personal knowledge. The developments in her case had been "confined to legal arguments on matters of Muslim law" which in this case were "very complex". The Plaintiff's *bona fides* was also "a matter for cross-examination in trial, not determination at an interlocutory stage".

Defendants' submissions

37 The Defendants submitted that the SOC and Proposed SOC did not disclose a reasonable cause of action. The Plaintiff challenged the Deeds for the first time in Suit 152. However, she did not dispute the validity of the 1959 Order which vested the Land in the 1959 Order trustees. The Plaintiff has also not applied to set aside the 1962 Order or the 1968 vesting of the Land in MUIS, and any setting aside must be by judicial review. Hence the Title Claim would not succeed as the Land belonged to MUIS before the Acquisition. Although the Title Claim is based on the claim that Kassim belonged to the *Hanafi* school, the records indicated that he belonged to the *Shafi'i* school.

38 Next, the Title Claim was frivolous and vexatious. The Plaintiff's reliance on the 1932 Will was misconceived. She could not show that as a matter of Muslim law the *wakaf* created over two-thirds of the Land was invalid, and at the time of the Acquisition neither Kassim's nor Zainal's estate had any interest in the Land. By the Deeds, the entire interest in the Land was conveyed to the trustees. Hence even if the 1932 Will were genuine, Kassim did not have any interest in the Land to pass to his estate when he made the Will and when he died. In any event, no grant of probate was issued in respect of the Will.

39 Further, the Title Claim was an abuse of the court process. The sole purpose of the Title Claim was for the Plaintiff to bring the Acquisition Challenge Claim. Even if the Title Claim succeeded, the Acquisition Challenge Claim would not succeed as the Collector could not have known of Kassim's or Zainal's interest in the Land at the material time to serve a notice of acquisition on them. Next, the Title Claim involved a deception on the court and was a sham. The Plaintiff and Farit had made false allegations. She claimed that Zainal was never aware that the *wakaf* created by the Deeds was invalid. But she and Farit also claimed that Zainal had told them that the Land was their ancestral land or that it belonged to Kassim, which could not be true. In fact, Zainal had affirmed the validity of the *wakaf* created by the Deeds when he obtained the 1959 Order; and when he applied for the 1962 Grant of LA, the schedule of assets did not include the Land. Thus Zainal had taken the position that the Land did not belong to Kassim. Further, the Plaintiff's allegation that Kassim belonged to the *Hanafi* school was rebutted by Zainal's own statement on oath (when he applied for the 1962 Grant of LA) that Kassim was "a Muslim of Shaffi sect".

40 Finally, the Plaintiff's claim was time-barred.

Whether there is a reasonable cause of action

41 Under O 18 r 19(1)(*a*) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"), pleadings may be struck out if they disclose no reasonable cause of action. A reasonable cause of action is one with some chance of success, when only the allegations in the pleadings are considered: *Madan Mohan Singh v Attorney-General* [2015] 2 SLR 1085 at [20]. The threshold for striking out is high, and the power to strike out a plaintiff's claim should only be exercised in a "plain and obvious" case: *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [18]).

42 In relation to the Title Claim, this is not an obvious case where the pleadings disclosed no reasonable cause of action. The Proposed SOC had set out the facts and cause of action to support the relief which the Plaintiff sought, *eg*, that the Deeds established a *wakaf* over the Land but nevertheless Kassim did not lose his beneficial interest in the Land; that alternatively the 1932 Will revoked the *wakaf* created by the Deeds; that in any event, the 1932 Will was effective to create a *wakaf* over only one-third of the Land; and that the *wakaf* purportedly created over two-thirds of the Land was invalid and thus Kassim and Ibrahim continued to hold an interest in the same as joint tenants. The Plaintiff also pleaded that Kassim held the sole beneficial interest in two-thirds of the Land after Ibrahim's death; that Kassim's interest in the Land was passed to Zainal; that title in the Land did not vest in MHEB because the 1962 Order was ineffective or *ultra vires* or that s 5 of the MHE Ordinance was not complied with. The fact that title to the Land was vested in MUIS before the Acquisition, or that the Plaintiff has not sought to set aside the 1962 Order or the 1968 vesting of the Land in MUIS, did not, contrary to the Defendants' submission, show that the Plaintiff has no reasonable cause of action. It is the title to the Land that

is precisely what the Title Claim seeks to dispute and the Plaintiff has sought a relief for the court to determine this.

43 Further, where a claim pertains to a legal issue which requires serious arguments or consideration, it is not appropriate to strike out. In this regard, the Plaintiff has pleaded an interpretation of the *Hanafi* school of Muslim law in the Proposed SOC that cannot be said to have no chance of success. As such, I refuse to strike out the Title Claim on the basis of O 18 r 19(1)(*a*) of the ROC.

Whether the claim is scandalous, frivolous or vexatious

44 Next, pleadings may be struck out if they are "scandalous, frivolous or vexatious" (O 18 r 19(1)(*b*) of the ROC). The parties had focused their submissions on whether the Title Claim was frivolous or vexatious. A claim can be "frivolous or vexatious" if it is "plainly or obviously unsustainable". An action is legally unsustainable if "it may be clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks". An action is factually unsustainable if it is "possible to say with confidence before trial that the factual basis for the claim is fanciful because it is entirely without substance", for example, if it is "clear beyond question that the statement of facts is contradicted by all the documents or other material on which it is based": *The* "*Bunga Melati 5*" [2012] 4 SLR 546 ("*Bunga Melati 5*") at [32]–[33] and [39].

Whether the Title Claim is factually unsustainable

45 The present action is not a case where it is clear beyond question that the original SOC and the Proposed SOC are contradicted by all the documents or other material on which it was based.

46 The Defendants submitted essentially that no beneficial interest was reserved for the settlors of the trust under the Deeds, and the Plaintiff was unable to show that as a matter of Muslim law the *wakaf* created over the Land was invalid (see [38] above). However, the Plaintiff had provided some evidence that, under the *Hanafi* school and if Abu Hanifa's position were to be accepted, a donor retains his beneficial interest over property which he has created a *wakaf* over; that the 1932 Will was valid under Islamic law and could revoke the earlier *wakaf* created by the Deeds; and in any event the 1932 Will was a testamentary *wakaf* that was only effective over one-third of the Land, which meant that Kassim retained a beneficial interest in two-thirds of the Land.

47 The Defendants also raised the issues of whether the 1932 Will was of effect (as no grant of probate, or letters of administration with will annexed, was made in respect of the Will) and whether Kassim had any interest in the Land to pass to his estate when he made the Will and when he died. However, the fundamental issue is whether the *Hanafi* school differed from the *Shafi'i* school on the issue of whether a donor of *wakaf* property disposed *inter vivos* retained a beneficial interest in the property. If so, whether there was a valid will would go to determine the subsequent issue of what interest the donor could have disposed of when he died. Hence, even if MUIS and MHEB were the owners of the Land from 1962 until the Acquisition, the premise of their ownership is the subject of the Plaintiff's Title Claim on the basis that the *Hanafi* school differed from the *Shafi'i* school in relation to how much *wakaf* property a donor/testator can dispose of and whether and how such disposition can be revoked.

48 As to whether Kassim belonged to the *Hanafi* school, the Plaintiff had pleaded (in the Proposed SOC) that Kassim was a Muslim born in India or of Indian descent and provided some basis to assert that Kassim belonged to the *Hanafi* school. She produced an excerpt from MUIS's website which stated that

Kassim was one of the traders who came from India, and a Certificate of Extract from the Register of Deaths showed Kassim to be of "Indian British" nationality. Dr Zamro also explained that a donor of Indian descent was more likely to belong to the Hanafi school and that Muslims belonging to the *Hanafi* school allegedly tended to execute instruments to vary or revoke an earlier *wakaf*. Although Zainal had signed the petition seeking the 1962 Grant of LA ("the Petition") which stated that Kassim was "a Muslim of Shaffi Sect", Mr Wijaya highlighted that the statement asserting that the contents of the Petition had been interpreted by the interpreter to the deponent and that the deponent "seemed perfectly to understand the same" was struck through. Mr Wijaya submitted that the admissibility and weight to be attached to the statement that Kassim was of the "Shaffi sect" in that Petition is a matter to be decided at trial. This is given that: (a) Zainal was only about seven years old when Kassim passed away and thus would not have known whether Kassim was a Muslim from the *Shafi'i* school; and (b) there is evidence from the Plaintiff who attested that Zainal could not read and write English and that he was not well-educated (which would suggest that Zainal may not have read or fully understood the contents of the Petition). This assertion is not clearly unreasonable or untenable.

49 Thus it cannot be said that the Title Claim was factually unsustainable. The threshold for striking out is high. Save in the plainest of cases, a court should not in a striking out application choose between conflicting accounts of crucial facts: *Bunga Melati 5* ([44] supra) at [45]. This is not such a plain case.

Whether the Title Claim is legally unsustainable

50 The Defendants submitted that the Title Claim is legally unsustainable because the Plaintiff was unable to show that, under Muslim law, the *wakaf* purportedly created over two-thirds of the Land was invalid. The Defendants

cited case authorities and academic texts to support their position that the restriction that "a *wakaf* may only be made in respect of up to one-third of the property of the person making the same" applied only to testamentary dispositions. Nevertheless, the Plaintiff has, by Dr Zamro's opinion, suggested an alternative basis for interpreting Muslim law on the basis of a donor from the *Hanafi* school, if Abu Hanifa's position were to be accepted. Dr Zamro has opined that Abu Hanifa's view is that a donor retains ownership of property that is the subject of a *wakaf*, such ownership or interest may be lost if a court declares the *wakaf* as irrevocable or by the creation of a testamentary *wakaf*, and where a testamentary *wakaf* is created it is effective only over one-third of the testator's property (see also [15] above).

51 It cannot be said that the Plaintiff's arguments have no merit. The authorities cited by the Defendants, in support of the proposition that there is no legal impediment in Muslim law for a person to give away any or all his property *inter vivos* to any person he wishes, did not specifically deal with a situation which pertained to a donor who was a Muslim of the *Hanafi* school. Mr Khoo also confirmed that the Singapore cases have yet to deal with a specific situation pertaining to a donor of *wakaf* property who is from the *Hanafi* school and whether different principles applied in such a situation in relation to an *inter vivos* or a testamentary disposition of *wakaf* property.

52 Ultimately the thrust of the issue is whether there is evidence that Kassim belonged to the *Hanafi* school, and whether there is a difference in the law for Muslims from the *Hanafi* school (as opposed to the *Shafi'i* school or any other school) in relation to *inter vivos* or testamentary disposition of *wakaf* property. As this issue has not been raised in and dealt with by the local courts, it cannot be said that the Plaintiff's claim is plainly or obviously unsustainable.

53 Next, it is also not so clear that the Title Claim is time-barred. While the Defendants submitted at the proceedings below that the Title Claim was time-barred under the LA, the Plaintiff had provided her response to these submissions, and it is not immediately apparent, at this stage of the proceedings, that the Plaintiff's submissions are clearly erroneous.

54 The Defendants have also submitted that the Title Claim is barred under the doctrine of laches. The pith of the Defendants' submission is that the Title Claim is time-barred even on the Plaintiff's own case, as she and Farit attested that Zainal had told them that the cemetery was their ancestral land or that it belonged to Kassim. These allegations, if true, showed that Zainal knew that the Land belonged to Kassim, but did nothing to claim it throughout his lifetime. To this, Mr Wijaya submitted that Farit's and the Plaintiff's attestations on these points could not be read in isolation because the Plaintiff had pleaded, even in her original SOC, that Zainal was not aware of the 1932 Will.

55 Laches is a doctrine of equity that bars a plaintiff's claim where there has been a "substantial lapse of time coupled with circumstances where it would be practically unjust to give a remedy" either because "the party has by his conduct done that which might fairly be regarded as equivalent to a waiver thereof", or where, "by his conduct and neglect" he had "put the other party in a situation in which it would not be reasonable to place him, if the remedy were afterwards to be asserted". This is a broad-based inquiry and it would be relevant to consider the length of delay before the claim was brought; the nature of the prejudice to the defendant; and any element of unconscionability in allowing the claim to be enforced: *Dynasty Line Ltd (in liquidation) v Sukamto Sia and another and another appeal* [2014] 3 SLR 277 at [58].

56 In this case, it is not so plain and clear that the Title Claim was barred by laches. The assertions by the Plaintiff and Farit highlighted by the Defendants at [54] above might show that Zainal knew that the Land belonged to Kassim, but it is unclear if Zainal knew he had an interest in the Land. The Plaintiff had pleaded and attested that Zainal did not know that he had an interest in the Land because he did not know of the existence of the 1932 Will. This, on the Plaintiff's case, was the evidence that would have allowed Zainal to know of his interest in the Land.

57 It bears reiterating that the inquiry into whether laches is made out is a broad-based one that requires a careful assessment of multiple, fact-sensitive factors. The Plaintiff had raised various arguments to show why laches should not apply in this case. These arguments are not so clearly unsustainable or inconsistent to be rejected at this early stage of the proceedings. As such, it cannot be said that the Title Claim is legally unsustainable.

Whether the claim is an abuse of the court process

58 Under O 18 r 19(1)(*d*) of the ROC and under the inherent jurisdiction of the court, pleadings may be struck out if they are an abuse of the court process. This could include: (a) proceedings which involve a deception on the court or constitute a mere sham; (b) proceedings where the process of the court is not being fairly or honestly used, but is employed for some ulterior or improper purpose; or (c) proceedings which are manifestly groundless, without foundation or serve no useful purpose. However, the striking out procedure is "not meant to be used as a ploy to avoid embarrassing proceedings and/or to evade debatable facts and/or legal arguments": *Chee Siok Chin and others v Minister for Home Affairs and another* [2006] 1 SLR(R) 582 at [34] and [36].

59 I am not satisfied that Suit 152 is an abuse of the court process or that the evidence at this interlocutory stage shows clearly that the Plaintiff (and Farit) knowingly made false claims. I deal with some matters relied on by the Defendants.

(a) The Defendants claimed that the Plaintiff and Farit falsely alleged that Zainal stated the Land was their ancestral land and belonged to Kassim. Zainal had filed OS 33/1959 to appoint the 1959 Order trustees and he did not include the Land in the schedule of assets that he filed in his application for letters of administration in 1962. However, these were matters done by Zainal. Even if Zainal had omitted the Land from the schedule of assets, it did not mean that he could not have equally informed the Plaintiff that the Land was their ancestral land or informed Farit that the Land belonged to Kassim. Bearing in mind this matter is at an interlocutory stage, such allegation is not sufficiently probative or clear to warrant a finding of bad faith on the Plaintiff's part.

(b) The Defendants also submitted that the Plaintiff falsely alleged that Zainal and his family were maintaining the Land whilst unaware of the Acquisition, and that it was public knowledge that the Land was vested in MUIS and later compulsorily acquired by the State. However, whether the Plaintiff or Farit actually knew these facts is a matter that cannot be firmly concluded at this interlocutory stage absent further examination and evidence of the Plaintiff's subjective knowledge.

(c) The Defendants highlighted that the Plaintiff's "general strategy" in Suit 152 was advised by Syed Jafaralsadeg Alhadad, who is an undischarged bankrupt with a past conviction for cheating. It is unclear how a third party's bankruptcy status or criminal antecedents affected the Plaintiff's culpability.

(d) The Defendants further submitted that the Plaintiff's demands for the entire of the Land contradicted her pleaded case that Kassim's estate was only "interested in two-thirds of the … Land". I find that this did not contradict the Plaintiff's pleaded case that Kassim's estate has an interest in the Land, and, in any event, the Proposed SOC had pleaded that Kassim is interested in two-thirds "or such portion of the … Land as [the Court] adjudges", with the corresponding relief.

(e) Next, the Plaintiff had obtained an inheritance certificate dated 2 May 2019 in respect of Zainal's Estate which stated the certificate was issued in accordance with the "Hanafi school". That certificate was obtained only after the SOC was first filed, and differed from the inheritance certificate obtained by the Plaintiff in respect of Zainal's Estate in December 2011 which stated that it was issued in accordance with the "Shafiee school". The Defendants submitted that this showed the Plaintiff to be making up her case as she went along. I find that the conduct of the Plaintiff in obtaining two inheritance certificates which declared differently the school of Muslim law did not necessarily support the Defendants' submission. When the Plaintiff obtained the 2019 certificate, the Defendants had not filed the striking out application and there was no evidence that the Plaintiff had intended to raise the issue of whether a disposition of property by a donor would differ depending on whether he was from the *Hanafi* or *Shafi'i* school of Muslim law, such that it could be said that the Plaintiff had obtained the 2019 certificate to deliberately change her pleaded case. The reason for any inconsistency between the 2019 and 2011 certificates would be more appropriate to be determined at a forum where the Plaintiff's veracity could be examined.

60 As for the Defendants' submission that the sole purpose of the Title Claim was to enable the Acquisition Challenge Claim to be brought and that the latter claim would not succeed even if the former claim succeeded, this did not mean that the Title Claim was an abuse of the court process. If the Plaintiff were to succeed on the Title Claim in that Kassim's estate retained an interest in the Land at the time of Kassim's death and such that the benefit accrued to Zainal's Estate, Zainal's Estate may possibly have a further recourse pertaining to the Land. Even if the Acquisition could not be set aside, this might not necessarily preclude a claim for compensation. Also, even if the MHE Ordinance did not provide for compensation for *wakaf* land that vested in the MHEB, the case might well be different if the *wakaf* created over the Land (or part thereof) was subsequently determined to be invalid. Hence, it cannot be said that the bringing of the Title Claim is a pointless exercise.

Conclusion

61 In conclusion, I allow the appeal against the AR's decision to strike out the Title Claim and allow the Plaintiff to amend the SOC based on the Proposed SOC. I uphold the AR's decision to strike out the Acquisition Challenge Claim, on the basis that it discloses no reasonable cause of action or alternatively that it is frivolous or vexatious. Hence, both RA 6 and RA 7 are allowed in part. Both parties are to resolve the amendments to the SOC together and if they cannot agree, to apply to the court to do so.

Audrey Lim
Judge

Suang Wijaya and Johannes Hadi (M/s Eugene Thuraisingam LLP)
for the plaintiff;
Khoo Boo Jin, Tang Shangjun, Lee Hui Min, and Jessie Lim
(Attorney-General's Chambers) for the defendants.
