IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHCR 12

High Court Suit No 152 of 2019 (Summons No 3427 of 2019)

Between

Fauziyah bte Mohd Ahbidin (executrix of the estate of Mohamed Ahbideen bin Mohamed Kassim (alias Ahna Mohamed Zainal Abidin bin Kassim), deceased)

… *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]

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

[2019] SGHCR 12

High Court — Suit No 152 of 2019 (Summons No 3427 of 2019)
Colin Seow AR
20 September 2019

18 December 2019 Judgment Reserved.

Colin Seow AR:

Introduction

1 Summons No 3427 of 2019 (the "Application") is an application taken out by the defendants seeking, *inter alia*, the striking out of the plaintiff's Endorsement of Claim in the Writ of Summons ("Endorsement of Claim") and the Statement of Claim, in High Court Suit No 152 of 2019 (the "Action"), pursuant to Order 18 Rule 19(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("Rules of Court") and/or the inherent jurisdiction of the court.

2 The hearing of the Application took place for a full day on 20 September 2019, at the end of which judgment was reserved. The Court now issues its judgment on the Application.

Background

3 The plaintiff is the sole executrix of her late father Mr Mohamed Ahbideen bin Mohamed Kassim (alias Ahna Mohamed Zainal Abidin bin Kassim) ("Zainal"), who deceased in 2011. Zainal, the only child of the plaintiff's late grandfather Mr Ahna Mohamed Kassim bin Ally Mohamed ("Kassim"), was a beneficiary and the administrator of Kassim's estate under a grant of letter of administration dated 1 October 1962. Kassim deceased in 1935.

4 The first, second and third defendants are the Singapore Land Authority, Collector of Land Revenue and Attorney-General of the Republic of Singapore respectively.

5 The dispute between the plaintiff and the defendants concerns four plots of land situated in Siglap (the "Siglap Land"), presently a Muslim burial ground:

(a) Land Lot MK 27-99949T (formerly designated as MK 27 Lot 3-1);

(b) Land Lot MK 27-99948P (formerly designated as MK 27 Lot 3-2);

(c) Land Lot MK 27-99944C (formerly designated as MK 27 Lot 3-6); and

(d) Land Lot MK 27-99943L (formerly designated as MK 27 Lot 3-7).

6 The Siglap Land, which the plaintiff claims to be "ancestral" land owned by Kassim since 1919 and soon thereafter established as a perpetual *wakaf* under Syariah law, was a subject of the following events over the years:

(a) The making of an order on 25 April 1962 by the then Minister for Law and Health pursuant to section 4 of the now repealed Muslim and Hindu Endowments Ordinance (the "MHE Ordinance"), whereby *inter alia* the Siglap Land was to vest in the Muslim and Hindu Endowments Board.

(b) The enactment of the Administration of Muslim Law Act (Act 27 of 1966) (the "AMLA"), wherein section 6(2) provided that:

> All property, movable or immovable, which was, immediately before 1st July 1968, vested in the Board established under the [MHE Ordinance] for purposes relating to the Muslim religion or on trust for religious or charitable purposes for the benefit of persons professing the Muslim religion shall, on 1st July 1968, without any conveyance, assignment or transfer whatever, vest in the Majlis for the like title, estate or interest and in the like tenure and for the like purposes as the same was vested or held immediately before 1st July 1968.

(c) The publication of a declaration under section 5 of the Land Acquisition Act (Cap 152, 1985 Rev Ed) in the 27 November 1987 *Government Gazette Extraordinary*, wherein it was declared that the Siglap Land is "needed for a public purpose, viz.: General Development".

(d) The making of entries, on behalf of the State, in the Index of Lands at the Registry of Land Titles and Deeds on 21 February 1989, indicating that the Siglap Land had vested in the State.

7 The plaintiff's claims in the Action are basically framed as follows:

(a) that the State's "purported" compulsory acquisition of the Siglap Land was defective and void (the "Land Acquisition Challenge Claim"); and

(b) that title to the Siglap Land is vested in the estate of Zainal (the "Title Claim").

The Application

8 At the hearing of the Application, counsel for the plaintiff indicated that the plaintiff wished to withdraw the parts of the Action that relate to the Land Acquisition Challenge Claim. In this regard, counsel explained that:

(a) in the light of a recent case decision in *Ahmad Kasim bin Adam (suing as an administrator of the estate of Adam bin Haji Anwar and in his own personal capacity) v Moona Esmail Tamby Merican s/o Mohamed Ganse and others* [2019] 1 SLR 1185, the plaintiff has formed the view that the Land Acquisition Challenge Claim should be dealt with by way of a judicial review proceedings instead; and

(b) the Land Acquisition Challenge Claim is, in the plaintiff's opinion, dependent on the prior question of whether there is any merit in the Title Claim – a question which should remain to be determined in the Action.

9 As a result, the substantive oral arguments at the hearing revolved largely around the question of whether the Title Claim ought to be struck out under Order 18 Rule 19(1) and/or the inherent jurisdiction of the court.

The defendants' case for striking out

10 Insofar as the Title Claim is concerned, the main thrusts of the defendants' case for striking out are as follows:

(a) the plaintiff's Endorsement of Claim and Statement of Claim (i) fail to disclose a reasonable cause of action, and/or (ii) are scandalous, frivolous, vexatious and/or an abuse of the process of the court; and

(b) the Action is time-barred under the doctrine of laches and acquiescence, pursuant to the court's equitable jurisdiction as statutorily preserved under section 32 of the Limitation Act (Cap 163, 1996 Rev Ed) (the "Limitation Act").

11 In support of [10(a)] above, much of the arguments focussed on the circumstances in which a perpetual *wakaf* under Syariah law was established in respect of the Siglap Land, shortly after Kassim acquired an interest in fee simple therein in 1919.

(a) In the Statement of Claim, the plaintiff alleges that on 19 January 1920, Kassim and three other persons (who shall hereinafter be individually referred to as "Oona Said", "Pana Shaik" and "Ibrahim") entered into an Indenture of Deed (the "1920 Deed"), whereunder:

(i) Kassim, Oona Said and Pana Shaik became tenants-in-common holding shares in the ratio of 21:3:2 respectively in the Siglap Land;

(ii) Kassim, Oona Said and Pana Shaik conveyed the Siglap Land to Kassim and Ibrahim as joint tenants; and

(iii) Kassim and Ibrahim were to manage or superintend the management of the Siglap Land "upon trust", and permit the Siglap Land to be "appropriated and used by the general public of the Mohamaden community in Singapore as a public burial ground for Mohamedans under the name of Bukit Wakaff Siglap,

according to such rule and regulation as may from time to time be prescribed by them".

(b) The plaintiff further alleges in the Statement of Claim that on 30 April 1921, a Deed of Settlement expressed to be supplemental to the 1920 Deed (the "1921 Deed") was entered into between Kassim and the same three persons (*ie*, Oona Said, Pana Shaik and Ibrahim), wherein it was stated that the Siglap Land "shall be a charitable property according to the custom or usage of Tanah Wakaf".

12 Counsel for the defendants submitted *inter alia* that by the plaintiff's own account in the Statement of Claim, Kassim would not have retained any beneficial interest in the Siglap Land after both the 1920 Deed and 1921 Deed were executed, as the terms of those Deeds did not reserve any beneficial interest in the same to be vested in Kassim. In this regard, counsel highlighted *inter alia* section 2 of the AMLA and *Majlis Ugama Islam Singapura v Saeed Salman and another* [2016] 2 SLR 26 (at [34]), where a *wakaf* as understood under domestic law is "the permanent dedication by a Muslim of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable", and a "foundation endowed in perpetuity", which "[i]n the eye of the law, the property belongs to God, and as such, the dedication is both permanent and irrevocable".

13 Counsel for the defendants further raised arguments addressing Zainal's conduct in his lifetime and his legal position *vis-à-vis* the Siglap Land.

14 Notably, counsel also invited the Court to accept the defendants' case that the Action is a "sham" and a "scam" perpetuated in bad faith by the plaintiff in the hope of seeking a monetary pay out from the Government.

15 The defendants' submissions in respect of the alleged time bar under the doctrine of laches and acquiescence (see [10(b)] above) are as follows. The defendants contend that Zainal's failure to raise any claims over the decades during his lifetime (be it in his personal capacity or in his capacity as administrator of Kassim's estate) amounted to an approval or acquiescence not to pursue the claims that are now brought in the Action. The defendants further claim to be prejudiced, given that information and evidence (including Zainal's testimony) that may be useful are now unavailable due to the delay, and that it is unconscionable for the plaintiff to seek to "contradict the positions taken by her grandfather and father since about 100 years ago, in order to bring this [Action] in 2019".

16 For completeness, the defendants also raised two further (and alternative) grounds concerning time bar, namely:

(a) Time bar under section 9(1) of the Limitation Act, which provides that:

> No action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.

(b) Time bar under section 22(2) of the Limitation Act, which provides that:

> Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued.

17 However, it should be mentioned that these other grounds appear to be couched in terms suggesting that they are addressing more the Land Acquisition

Challenge Claim than they are calculated to target the Title Claim specifically. For instance, in the defendants' written submissions, they stated that the Action is time-barred under section 9(1) of the Limitation Act "because by the time the [Action] was commenced on 1 February 2019, more than 12 years have passed *since the Government took possession of the Siglap Land and title was vested in the State*" (emphasis added). Likewise on section 22(2) of the Limitation Act, the defendants stated that "*if* (which is denied) section 9(1) did not apply, *then* the [Action] was time-barred under section 22(2) of the Limitation Act by the time the [Action] was commenced on 1 February 2019 *(as more than 6 years have passed since title to the Siglap Land was vested in the State)*" (emphasis added).

The plaintiff's case resisting the striking out

18 The plaintiff did not tender any written submissions in respect of the Application. In oral submissions, her counsel dedicated a significant amount of time in the attempt to persuade this Court that because the dispute concerns matters involving a *wakaf* under Islamic law, it is necessary for the dispute to be adjudicated in a trial with expert evidence led from Islamic jurists. This is in conjunction with what seems to be the plaintiff's *key* contention in the Title Claim, pleaded in the Statement of Claim as follows:

> […]
>
> 7 The effect of the 1920 Deed and the 1921 Deed by Kassim, Oona Said, Pana Shaik and Ibrahim was to establish a perpetual *wakaf* under Syariah law.
>
> 8 However, under Syariah law, a *wakaf* may only be made in respect of up to one-third of the property of the person making the same. To the extent that a *wakaf* exceeds one-third, it is only valid in respect of up to one-third.
>
> 9 Accordingly, the *wakaf* purportedly created over the other two-thirds of the Ancestral Siglap Land is invalid, and

> Kassim and Ibrahim, continued to hold an interest in the same as joint tenants.
>
> […]
>
> [emphasis in underline added]

19 Counsel for the plaintiff suggested that a court deciding the substantive merits of this key contention should draw a distinction between the applicable doctrines of the *Hanafi* school of Islam on the one hand, and those under the other established schools of Islam on the other. In particular, counsel contended that the former is the relevant school of Muslim law under which the plaintiff's key contention is to be assessed, citing *inter alia* the plaintiff's assertion that she belongs to the *Hanafi* school, as well as documentary evidence in the form of an Inheritance Certificate previously issued by the Syariah Court in respect of Zainal's estate, stating that "THIS CERTIFICATE OF INHERITANCE IS ISSUED IN ACCORDANCE WITH THE HANAFI SCHOOL OF MUSLIM LAW". Counsel also adduced a couple of extracts from Muslim law literature purportedly covered under section 114(1) of the AMLA, to suggest that the doctrines of the *Hanafi* school would make good, in a substantive hearing, the plaintiff's key contention mentioned above.

20 In response to the defendants' claim of time bar under the doctrine of laches and acquiescence, the plaintiff disputes any suggestion that Zainal had sufficient knowledge at the material time(s) as to warrant a finding that he had, in the course of his life, approved or acquiesced in not pursuing the claims that are now brought in the Action. In respect of the other time bar claims (see [16]-[17] above), it was asserted that section 9(1) of the Limitation Act is inapplicable as there is no recovery of land sought in the Action, and that section 22(2) of the Limitation Act is not intended to apply to *wakafs* (as distinct from trusts).

21 The plaintiff also denies the defendants' attack on her *bona fides* in bringing the Action, as outlined in [14] above.

The Court's decision

Abuse of court process?

22 This Court will first deal with the defendants' allegations regarding the plaintiff's *bona fides* in bringing the Action (see [14] above), in order to determine whether those allegations constitute any basis for striking out in the present case.

23 It is established that an action not brought *bona fide* for the purpose of obtaining relief but for some ulterior or collateral purpose is liable to be struck out for constituting an abuse of court process (see *Lonrho Plc and others v Fayed and others (No 5)* [1993] 1 WLR 1489 ("*Lonrho Plc v Fayed*") at 1502D, endorsed in *Gabriel Peter & Partners v Wee Chong Jin* [1997] 3 SLR(R) 649 ("*Gabriel Peter*") at [22]). Nevertheless, for such a striking out to be ordered, the case for striking out must be clear. As Stuart-Smith LJ opined in *Lonrho Plc v Fayed* (at 1502D):

> If an action is not brought bona fide for the purpose of obtaining relief but for some ulterior or collateral purpose, it may be struck out as an abuse of the process of the court. The time of the court should not be wasted on such matters, and other litigants should not have to wait till they are disposed of. It may be that the trial judge will conclude that this is the case here; in which case he can dismiss the action then. *But for the court to strike it out on this basis at this stage it must be clear that this is the case.* […]
>
> [emphasis added]

24 In the present case, the defendants' contentions in support of a striking out on this ground can be summarised as follows:

(a) In the plaintiff's solicitors' letter of demand dated 28 December 2018, the plaintiff demanded that the first defendant "takes all immediate and necessary steps to restore *the ownership* of the Siglap Land" (emphasis added) to the plaintiff, as if asserting rightful ownership over the *whole* of the Siglap Land. Nothing in the letter of demand (including other previous correspondence sent by or on behalf of the plaintiff on the same matter dating back as early as 5 September 2017) evinced any assertion that the *wakaf* in respect of the Siglap Land was invalid to any extent or at all.

(b) In the Endorsement of Claim in the Writ of Summons filed on 1 February 2019, nothing was also stated therein to put into issue the validity of the *wakaf* to any extent or at all. In this regard, the contents of the Enforcement of Claim only revealed, as the gravamen of the plaintiff's complaint, that no valid notice of the "purported" compulsory acquisition of the Siglap Land was given to "*inter alios* Zainal".

(c) It was only much later when the Statement of Claim was filed on 28 March 2019, that the plaintiff alleged – for the very first time – that the *wakaf* was invalid to the extent of two-thirds, signifying her intention to assert a two-thirds beneficial share in the Siglap Land in favour of Zainal's estate. This, according to the defendants, is inconsistent with what the plaintiff had asserted in the letter of demand and Endorsement of Claim, and is symptomatic of the plaintiff's lack of *bona fides* in pursuing her claims against the Government.

(d) The plaintiff had further been untruthful in claiming that prior to 2016 she and her family members were not aware that the Siglap Land had been compulsorily acquired, despite having allegedly made several

> entries into the Siglap Land over the years to maintain the premises. In this regard, the defendants contended that there is ample evidence demonstrating, for example, that the State had been making significant and noticeable improvements to the premises ever since the Siglap Land was compulsorily acquired.

25 In this Court's view, while several of these allegations, considered either in combination with one another or as a whole, do give some pause to an unquestioning acceptance of the plaintiff's *bona fides* in the Action, they are not sufficiently clear or probative enough – at this stage – to warrant an absolute finding of bad faith as contended by the defendants. These allegations, though concerning, are at best circumstantial. As such, this Court does not find it appropriate to arrive at a determinative finding on this point in the absence of a trial.

26 Granted, the plaintiff appears to demonstrate a propensity to change the parameters of her substantive claims in the Action as the case unfolds (see [8] above, and [34] below). However, this on its own falls shy of lending *full* credence to the serious aspersions cast by the defendants on the plaintiff's *bona fides*.

27 In sum, this Court finds that the case for striking out on the ground of abuse of court process has not been adequately made out.

Other grounds advanced for striking out under Order 18 Rule 19(1)

28 I now turn to assess whether the defendants have nevertheless succeeded in establishing any other basis for striking out under Order 18 Rule 19(1) of the Rules of Court.

Ground based on "no reasonable cause of action"

29 In the Application, the defendants have included "no reasonable cause of action" as one of the bases for striking out. Bearing in mind Order 18 Rule 19(2) of the Rules of Court, read with Rule 19(1)(*a*) thereof, this Court finds that the defendants have not succeeded on this ground.

30 In the Endorsement of Claim, it is clear that the plaintiff is seeking relief based on the case that valid notice of the "purported" compulsory acquisition of the Siglap Land was not given to "*inter alios* Zainal". The Statement of Claim, in turn, also quite comprehensibly presents the plaintiff's case as comprising both the Land Acquisition Challenge Claim and the Title Claim. Short of a minute examination of the documentary material and factual matrix, the claims do appear, on their face, to have "some chance of success" (*cf Gabriel Peter* at [21], citing *Drummond-Jackson v British Medical Association* [1970] 1 All ER 1094 (*per* Lord Pearson)). It thus cannot be said that it is plain and obvious that a striking out is warranted under this ground.

31 For completeness, it is noted that the defendants have, in the Application summons, also stated as one of the grounds for striking out that "The Plaintiff's claims in this action cannot be made by way of a Writ of Summons". Although this seems to be suggesting that one or more of the claims in the Action ought to be commenced by way of a judicial review proceedings instead (see also [8(a)] above), this Court observes that the defendants have not actively advanced detailed arguments on this in the course of the current proceedings. As such, little weight was accorded to this ground in the Court's analysis.

Ground based on "scandalous, frivolous or vexatious"

32 I come now to the ground of "scandalous, frivolous or vexatious" under Order 18 Rule 19(1)(*b*) of the Rules of Court, although for reasons that will become apparent below, the focus is on the "frivolous or vexatious" limbs.

33 It is trite that the test of whether a claim or action should be struck out under Order 18 Rule 19(1)(*b*) of the Rules of Court depends on whether the claim or action is plainly or obviously unsustainable (see *The "Bunga Melati" 5* [2012] 4 SLR 546 ("*The Bunga Melati*") at [32]). A plainly or obviously unsustainable claim or action is one which is either legally or factually unsustainable (see *The Bunga Melati* at [39]).

34 In relation to the Title Claim, the plaintiff's key contention as pleaded in the Statement of Claim is that two-thirds of the *wakaf* is invalid, such that Kassim and Ibrahim continued to hold a two-thirds interest in the Siglap Land as joint tenants (see [18] above). In the Application, particularly at the oral hearing, the plaintiff argued – again, for the first time – that the *Hanafi* school of Islam is the relevant school of Muslim law under which the contention would have to be assessed in a substantive hearing, relying on (a) her own assertion that she belongs to the *Hanafi* school of Islam, (b) an Inheritance Certificate previously issued by the Syariah Court in respect of Zainal's estate, and (c) extracts from Muslim law literature relating to doctrines of the *Hanafi* school (see [19] above).

35 The point of the plaintiff's argument, it appears, is to distinguish *inter alia* past local case authorities (involving Muslims of the *Shafi'i* school of Islam) where the Court of Appeal and the High Court recognised that while a Muslim testator only has the power under Mohammedan Law to dispose of not

more than one-third of his property at the time of death, he has complete freedom to dispose of all his property *inter vivos* (*ie*, during his lifetime) (see *Shafeeg bin Salim Talib and another v Fatimah bte Abud bin Talib and others* [2010] 2 SLR 1123 at [23]-[25]; *Mohamed Ismail bin Ibrahim and another v Mohammad Taha bin Ibrahim* [2004] 4 SLR(R) 756 at [31]-[35] and [40]).

36 However, the plaintiff's entire case in this regard is problematic for two crucial reasons. First, there is clear and compelling historical evidence that Kassim in fact belonged to the *Shafi'i* school of Islam. In the grant of letter of administration in Kassim's estate (see [3] above), the petition seeking the grant stated in no uncertain terms that Kassim was himself "a Muslim of Shaffi Sect". The petition was furthermore signed off by Zainal (*ie,* Kassim's only child) stating that he "make oath and say that the contents of the foregoing petition are to the best of my knowledge, information and belief in all respect true". Thus, as a matter of fact, court records indicate that Kassim belonged to the *Shafi'i* school of Islam, as endorsed by the High Court under Zainal's oath. In this Court's view, this constitutes far more concrete and preponderant proof of Kassim's affiliation to the *Shafi'i* school of Islam than the plaintiff's rather suppositive assertions would suggest otherwise.

37 Second, and in any case, it is common ground between the parties (and indeed, an integral part of the plaintiff's pleaded case) that the *wakaf* was purportedly established by Kassim *in his lifetime*, as opposed to by way of a testamentary disposition. Nothing in relation to the Application placed before this Court (including the Muslim law literature specifically referred to by the plaintiff's counsel) actually suggests 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. Indeed, this became increasingly apparent at the hearing as it progressed, where the plaintiff's counsel struggled,

upon challenge by this Court, to draw the Court's attention to any statement in the Muslim law literature adduced that supported the contention that the *Hanafi* school differed materially from the *Shafi'i* school in this area of Islamic law.

38 Seen in the light of these difficulties, the Title Claim unravels itself as a claim that could neither withstand evidential scrutiny, nor find any footing or basis in the relevant area of Islamic law. This renders it a plainly and obviously unsustainable claim. In other words, this is clearly not a claim in respect of which court time and the State's litigation resources should be wasted on.

Time bar issues

39 Given the findings in [36]-[38] above, it is unnecessary for this Court to address the issues concerning time bar *vis-à-vis* the Title Claim. The Court will accordingly pass no comment on these issues.

40 This is similarly the case to the extent that any issues of time bar are otherwise relevant to the Land Acquisition Challenge Claim, given the plaintiff's intention to withdraw the Land Acquisition Challenge Claim from the Action (see [8] above).

Conclusion

41 The Action as a whole comprises two categories of claims, namely the Land Acquisition Challenge Claim and the Title Claim (see [7] above). The plaintiff has indicated that she wishes to withdraw the former on the basis that it should be pursued separately by way of a judicial review proceedings.

42 The Title Claim, on the other hand, has for the reasons included in this judgment been found to be plainly and obviously unsustainable (see [36]-[38]

above). This is even as the plaintiff seems to be moulding her case progressively with time (see [24]-[26] above).

43 As a result, it is appropriate for the *entire* Action to be struck out, and the Court so orders. Costs relating and incidental to the Application will be determined after the Court has heard the parties' costs submissions.

Colin Seow
Assistant Registrar

Koh Li Qun Kelvin, Niklas Wong See Keat and Thara Rubini Gopalan (TSMP Law Corporation) for the plaintiff;
Khoo Boo Jin, Tang Shangjun, Szetoh Khai Hoe Terence and Jessie Lim (Attorney-General's Chambers) for the defendants.