

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2025] SGHCF 43

Originating Application (Probate) No 4 of 2025

In the matter of the Probate and Administration Act 1934

And

In the matter of Grant of Probate [redacted] issued by the High Court of
Singapore

And

In the Estate of [the Testatrix], deceased

XGP

... Applicant

GROUNDS OF DECISION

[Probate and Administration — Grant of probate — Revocation]

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XGP

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General Division of the High Court (Family Division) — Originating Application (Probate) No 4 of 2025

Kwek Mean Luck J

10 July 2025

16 July 2025

Kwek Mean Luck J:

1 In HCF/OAP 4/2025 (“OAP 4”), the applicant, XGP, applies for an order to revoke Probate 1033/1977 granted to [B] (“Executrix”), the surviving Executrix and Trustee, and to appoint himself as the executor and trustee for the Will of [the Testatrix] (“Will”). He also seeks an order that as the new executor and trustee, he is empowered with an injunction order to evict all individuals and/or trespassers residing in the estate’s property who have no interest in the Will. Finally, the applicant seeks permission, as the new executor and trustee, for the sale or mortgage of the estate’s property on [the address] and for the reimbursement and distribution of the estate’s sale proceeds to the heirs.

2 I dismissed the application. As I had informed the applicant at the hearing, there are four issues with this application. I set out below my full grounds of decision.

My reasons

Action should have been commenced by way of originating claim as a contentious probate proceeding

3 First, the action was commenced as an originating application (without notice), on the footing of a non-contentious probate proceeding, when it should have been commenced as a contentious probate proceeding by way of originating claim. Pursuant to P 6 r 33 of the Family Justice (Probate and Other Matters) Rules 2024 (“FJPR”), a grant of probate may only be amended or revoked by way of a non-contentious probate proceeding, commenced by originating application (without notice), in special circumstances or on the application or with the consent of the person to whom the grant was made. In other circumstances, a contentious probate proceeding should be commenced by originating claim under Part 7 of the FJPR on “Contentious Probate Proceedings”.

4 What constitutes special circumstances for a grant of probate to be revoked under non-contentious probate proceedings is left undefined in the FJPR, and, to my knowledge, no local reported case has discussed this issue. In England and Wales, however, the Non-Contentious Probate Rules 1987 (SI 1987 No 2024) (UK) contains a provision similar to P 6 r 33 of the FJPR – rule 41, which states that a grant should be amended or revoked by way of non-contentious probate proceedings only on the application or with the consent of the person to whom the grant was made or in “exceptional circumstances”. In R D’Costa, P Teverson & T Synak, *Tristram and Coote’s Probate Practice* (LexisNexis, 32th Ed, 2020), the learned authors, having regard to rule 41, suggest that the main grounds for revocation under “exceptional circumstances” include:

- (a) where a grant is made to a person who was not entitled to it, either because the person had acted in ignorance of the true facts or had acted fraudulently by making a false statement or material omission (at para 17.8);
- (b) where a grant, though properly made, has subsequently become ineffective and useless and would prevent the proper administration of the estate (at para 17.9);
- (c) where a grant should not have been made in the first place, *eg*, due to the presence of a caveat (at para 17.10).

5 The learned authors further note that absent these exceptional circumstances or consent from the grantee, procedure by way of probate claim for revocation is normally necessary (*Probate Practice* at para 17.6). Having set out the position under English law, absent submissions on this legal issue, I do not come to a conclusion on the scope of “special circumstances” under P 6 r 33 and whether the grounds for revocation by way of non-contentious probate proceedings include the grounds earlier enumerated.

6 From the court records, the applicant was informed of this FJPR requirement by the Assistant Registrar of the Family Justice Court (“FJC”) conducting the case conference for OAP 4. The applicant has nevertheless chosen to proceed in this matter as an originating application (without notice).

7 I now turn to consider the applicant’s explanation and case. The applicant explained that he filed this as an originating application (without notice), as he is not suing the Executrix. His position is that the probate has not been executed and fulfilled pursuant to the Will. He considers this a matter of law. If he is forced to commence by way of originating claim, he would have to

put in all his allegations against the Executrix. This will increase the dispute and he wants to avoid doing so. An originating application (without notice) was, in his view, the most amicable manner to resolve the dispute.

8 Examining the applicant's case, he alleges that the Executrix has not made any effort to execute the probate according to the Will, failed to provide an account of receivables and expenditures and did not act with diligence, good faith and transparency.¹ Briefly detailing the applicant's allegations, he claims to be the testatrix's grandson and a beneficiary of the Will, while the Executrix was one of the testatrix's disciples.² Although the Will states that the temple properties are to be left to the beneficiaries, the Executrix continued to reside in the properties, allowed her relative and friends to stay in the properties and used temple funds to support their living expenses.³ The Executrix has also unreasonably delayed and refused to distribute the assets to the beneficiaries.⁴

9 These are but some of the allegations made by the applicant in his affidavit.⁵ Having had regard to the applicant's case, my view is there were no "special circumstances" as per P 6 r 33 of the FJPR for the grant to be revoked in a non-contentious probate proceeding. The removal of the Executrix, on the ground of neglect and breach of duties, and the eviction of individuals residing in the estate's property are clearly contentious matters to be dealt with in contentious probate proceedings. It would not be appropriate to hear and decide on such contentious matters on the footing of an originating application (without

¹ Written Submission dated 9 July 2025 ("AWS") at para 2b.

² Affidavit filed on 21 March 2025 ("Applicant's affidavit") at p 22.

³ Applicant's affidavit at p 23.

⁴ Applicant's affidavit at p 23.

⁵ See Applicant's affidavit at pp 22–26.

notice), without giving the Executrix an opportunity to present her case. For the avoidance of doubt, I do not come to a view on the merits of the applicant's allegations.

10 While the court retains the discretion under P 3 r 5(1) of the FJPR to order otherwise in the interest of justice, I did not find that the applicant's reasons justified the exercise of my discretion, for the procedures in Part 7 of the FJPR for contentious probate proceedings to be bypassed. While the applicant's professed intention to avoid expanding the dispute may be commendable, the applicant, in commencing an originating claim, need only provide sufficient reasons and evidence to justify his stance. He does not need to include what is not relevant.

No evidence that application was served on the Executrix

11 Second, the applicant seeks to remove the appointed Executrix and claims to have informed the Executrix. However, he has provided no credible evidence that he has given notice to the Executrix of OAP 4 or of the hearing dates. The applicant claimed in emails sent to the FJC Registry dated 16 May 2025 that he had served the application and affidavit on the Executrix, attaching photographs which he says shows the service. However, it is not apparent from the photos, what documents were delivered, who the documents were delivered to and if they were received by the Executrix. There is also no affidavit from the applicant affirming that he served the Executrix.

Applicant has not furnished evidence as to his identity

12 Third, the applicant claims to be one of the beneficiaries of the Will, namely [C]. However, the applicant's name is XGP. He claimed that his name was changed due to a deed poll. However, he was unable to produce the deed

poll to show that he is [C]. He said that the solicitor who did his deed poll has retired, and the law firm has informed him that the relevant documents have been destroyed since the deed pool was made over 30 years ago. He also said that his identity can be confirmed by the other beneficiaries. However, there was nothing before the court from the other beneficiaries that affirmed his identity. The applicant was informed by the FJC on 20 May 2025 of this issue, and that he was to file a supplementary affidavit to address this, amongst other issues.

13 In response, the applicant emailed a document to the FJC Registry, dated 18 June 2025. This document has what is titled as a “Supplementary Affidavit”.⁶ This was signed by the applicant on 18 June 2025, but the chop from the commissioner for oaths states “1 Apr 2024 – 31 Mar 2025”.⁷ After receipt of this document, the FJC Registry directed the applicant to file a supplementary affidavit. The applicant did not do so. Leaving aside that the applicant has not filed a supplementary affidavit, the applicant states in the document that he is [C] and during the hearing, argues that this should be sufficient. But no evidence is furnished in support of his claim. Consequently, there was no evidence before me that the applicant is someone who has the standing to even commence this application.

No evidence of consent by beneficiaries

14 Fourthly, during the case conferences on 20 May 2025 and 4 June 2025, the Assistant Registrar was inclined, pursuant to P 4 r 9 of the FJPR, to issue formal notices of action to the other grandchildren who also stood as residuary

⁶ Document emailed on 18 June 2025 (“180625 Document”) at p 4.

⁷ 180625 Document at p 9.

legatees to the Will, as their rights may be affected by this application. This was conveyed to the applicant. In response, the applicant claimed that the other beneficiaries to the Will consent to this application and said that he will furnish their consents.⁸ It was on that basis that the Assistant Registrar did not direct for notice of actions to be served on them. But there is no evidence before the court of such consent.

15 The applicant relies on documents submitted in the “Supplementary Affidavit” to show that the beneficiaries have consented. As previously mentioned, the “Supplementary Affidavit” did not appear to be properly affirmed. But leaving aside this issue, the documents that he emailed to the FJC Registry also do not address the gap.

(a) The applicant says that the issue of consent is addressed in the minutes of a family meeting.⁹ However, the minutes were prepared by the applicant and are not signed by the purported beneficiaries to whom the minutes were addressed.¹⁰

(b) The applicant also relies on Attendance Notes from A C Fergusson Law Corporation (“ACF”) dated 17 August 2022¹¹ and the follow up letters from ACF to [D]¹² and [E]¹³ dated 18 August 2022 as evidence of consent from the beneficiaries to this application. However, the follow up letters suggest that [D] and [E] consented to serve as joint

⁸ AWS at para 3c.

⁹ 180625 Document at p 5, para 2.

¹⁰ 180625 Document at pp 10–14.

¹¹ 180625 Document at pp 17–18.

¹² 180625 Document at p 19.

¹³ 180625 Document at pp 20–21.

administrator and administratrix with the applicant, and not for the applicant to be the sole administrator. Moreover, the follow up letter from ACF to [D] does not contain any signature from ACF or confirmation signature from [D]. The follow up letter from ACF to [E] contains a signature from ACF but the section for [E] to confirm that she agreed to be appointed as joint administrator is not signed.

(c) The applicant also points to signed appointment letters to ACF and to real estate agents.¹⁴ There is a signed letter dated 30 November 2023 from [the purported beneficiaries] appointing ACF to be their solicitors.¹⁵ The applicant titled the exhibit “[...] Letter of Consent dated Nov 30, 2023 (revocation lawsuit)”. However, examining the contents of the letter, it relates to proceedings to obtain the sanction of the court for the sale of a property and other matters incidental thereto, and does not clearly evince consent to this application. Likewise, the signed letters appointing Edmund Tie & Company (SEA) Pte Ltd¹⁶ and ERA¹⁷ as marketing agents for the sale of a property do not evince consent to the present proceedings on probate.

16 In summary, there is no evidence before the court that the other beneficiaries to the Will have consented to this application. When this was pointed out to the applicant at the hearing, he asked that the court read between the lines. However, leaving aside the absence of any evidence on affidavit and any direct evidence from the document emailed on 18 June 2025, it also cannot

¹⁴ AWS at para 3c.

¹⁵ 180625 Document at p 42.

¹⁶ 180625 Document at pp 33–35.

¹⁷ 180625 Document at pp 36–39

be inferred from the document that the other beneficiaries indeed consent to OAP 4.

17 In his written submissions, the applicant frames his argument to be one of estoppel by conduct or acquiescence – in that no beneficiary can challenge the authority and representation of the applicant in the administration and litigation in relation to this probate matter.¹⁸ But his argument on estoppel is premised on “clear evidence of having authorized the applicant to act”. As mentioned above, there is no evidence of this authorisation in relation to this probate application.

18 As such, the situation before me was one where no notice of action was issued to the beneficiaries whose interests may be implicated nor was there evidence of consent on their part. This was not satisfactory.

Conclusion

19 In view of the fundamental deficiencies with the application as identified above, OAP 4 was dismissed. For the avoidance of doubt, this does not preclude the applicant from commencing a fresh action as an originating claim, which will be adjudicated on its own merits.

Kwek Mean Luck
Judge of the High Court

¹⁸ AWS at para 3.

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The applicant in person.
