

**IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
IN THE FEDERAL TERRITORY, MALAYSIA
[ORIGINATING SUMMON NO: WA-24NCvC-5545-12/2023]**

BETWEEN

1. MUHAMMAD MOHAMED HANEEFA

[NRIC No:560314-08-6229]

**2. MOHAMED MUSA MOHAMED
HANEEFA**

[NRIC No: 531216-08-6417]

3. AMINAH BEE MOHAMED HANEEFA

[NRIC No:400820-08-5424]

... PLAINTIFFS

AND

**1. ANNES FATIMAH KAZAL @ KADIR
BACHA**

[NRIC No: 760402-08-6030]

**2. WOODROSE SENIOR RESIDENCES
SDN BHD**

[NRIC No: 202001011846 (1368166-D)]

**3. BABY HASNA @HASNAH BEE MOHD
HAN I PAH**

[NRIC No: 410916-08-5756]

... DEFENDANTS

DECISION

[1] One of the things that perplexes the Bench is when an applicant has opted to appeal the decision of the court, especially given that the

initial application was presented in a manner that entrusted the determination entirely to the court's discretion. This appeal challenges the court's discretion in dismissing an application for an order that an inquiry be held concerning the mental health of the Third Defendant under the Mental Health Act 2001 (MHA). This judgment aims to elucidate the foundational principles and the judicious considerations that guided this Court's decision.

- [2] The Plaintiffs who are the siblings of the Third Defendant sought this Court an order for an inquiry under s56 MHA to determine whether the Third Defendant is capable of managing herself and her affairs. The Plaintiffs sought for an order that the First and Second Defendants bring the Third Defendant for such examination under s54 MHA. Subsequently, should there be a need for an appointment of a committee to look after the affairs of the Third Defendant and her estate, the First Plaintiff, the First Defendant and the Second Defendant be appointed as the committee under s58 and s59 MHA. There were several other reliefs prayed for consequential to the determination of the Third Defendant's mental health under the MHA.
- [3] From the cause papers, this Court noted that the Third Defendant (age 83) was currently placed with the Second Defendant. The Second Defendant is a company that operates homes to care for senior citizens which provides accommodation, care and nursing facilities, catering services amongst others. But since the filing of the cause papers, the First Defendant was no longer staying at the care and facilities of the Second Defendant. The First Defendant is her adopted daughter. After Ramadhan of 2023, the Plaintiffs were not able to contact the Third Defendant, widowed, and were not able to locate her. There were numerous attempts that included visits to the house of the First Defendant but were unsuccessful. The Plaintiffs were informed by the First Defendant's husband that the

Third Defendant was suffering from dementia and Alzheimer's disease.

- [4] The Plaintiffs' efforts, even visits to the Third Defendant's house in Ipoh Perak, came to no fruition. Police reports were lodged on 20.8.2023, 23.8.2023, 24.8.2023 and 26.8.2023. Advertisements of missing persons were made. Pursuant to the police report dated 26.8.2023, the police raided the house of the First Defendant to locate the Third Defendant. The First Defendant had brought the police, the Plaintiffs and one Suraiyah Binti Jalaludeen (daughter to the Third Defendant) to the Second Defendant. The Third Defendant was housed there.
- [5] At the hearing the Plaintiff's application (OS), the Third Defendant was represented. She had also affirmed an affidavit [Enc 18] to state her objection to the Plaintiffs' OS. This Court reminded the Plaintiffs that they must show prima facie evidence to this Court that an inquiry was warranted.
- [6] The Third Defendant herself had affirmed an affidavit in her objection to the Plaintiffs' OS. She had expressed her sadness and regret at the steps taken by the Plaintiffs vide their OS filed on 11.12.2023. She submitted herself to a neuropsychiatric examination by Associate Professor Dr Prem Kumar Chanderasekaran, a renowned specialist in the said field. The result included the confirmation that she was able to instruct her solicitors on matters that concerned her estate and affirm affidavits. The neuropsychiatric assessment report was exhibited. This Court observed and considered ultimately, the following assessment:

"When I examined her at 12 noon, her mental state examination (MSE) revealed an 82-year old Indian Muslim lady who was appropriately dressed and who was forthcoming with good eye contact. Her speech was relevant and her mood was normal with appropriate effect. There were no perceptual disturbances

or any disorder of thought content. Her ability towards abstract thinking and her level of intelligence appeared to be grossly normal. She also possessed good judgment and insight. I then assessed her cognitive functioning by way of a Mini-mental State Examination (MMSE) in which she scored 23/30 points, indicating only mild cognitive impairment. Based on these findings, I agree that she suffers from mild Alzheimer's Dementia. The possible progressive nature of this disorder calls for early contingency plans in the event she experiences rapid cognitive decline later.

Nonetheless, as it stands, Puan Baby Hasna is deemed to still possess the mental capacity as per the United Kingdom (UK) Mental Capacity Act (MCA) 2005 and has the capacity to instruct her solicitors with regard to her estate. I have confirmed that it is her wish to have her daughter (Anees Fatimah) to act on her behalf using a Power of Attorney (POA) - she is further aware that she has the power to revoke the POA or over-ride it as long as she is alive. She also possesses Testamentary Capacity and attests that she wishes no change in her Will from 2014. She is not sufficiently mentally disordered to fall under any Part or Section for inquiry in the Malaysian Mental Health Act (MHA) 2001, namely Sections 52 or 54 of Part X (10)."

- [7] That last line was disregarded by this Court as the duty to make such conclusions was this Court's. Nevertheless, the facts that the Third Defendant was able to instruct her solicitors and the medical assessment disclosed at the juncture of the Plaintiffs' OS that the Third Defendant could still mentally function stood out austere featuring hindrance to the contention that there was prima facie evidence for this Court to order for an inquiry under s52 MHA.
- [8] In response, the counsel for the Plaintiffs requested to take into consideration what the Third Defendant stated. And that "if she

needs no disturbance from the Plaintiffs, then we will oblige." On that note and stance, with the fact that although the Third Defendant was experiencing mild or early stages of Alzheimer Dementia, she was still capable of managing herself and her affairs. The First Defendant had averred that she has been and would continue to house the Third Defendant and take care of her. The Third Defendant's short stint being accommodated at the Second Defendant's was due to the First Defendant's husband's heart problems, operations and recovery.

[9] Since the Plaintiffs did not rebut the Third Defendant's factual averment on her medical mental condition, this Court found that there was no prima facie evidence at that juncture to order for such an inquiry. The Plaintiffs had submitted that they would oblige the Third Defendant's wishes. The Plaintiff ought to be bound by their position that they had declared to this Court. The Plaintiffs' OS was dismissed with costs of RM5,000 to be paid to the First and Third Defendants, and RM5,000 to the Second Defendant.

[10] In coming to this decision, the following authorities guided this Court:

- *Tan Poh Lee & Ors v Tan Kim Choo @ Tan Kim Choon & Anor* [2018] 6 MLJ 141;
- *Tan Chin Yap v Nyanasegar Muniandy & Anor* [2022] CLJU 2102; [2022] 1 LNS 2102;
- *Ng Pik Lian v Tai May Chean and other Appeals* [2022] 2 MLJ 950;
- *Tee Wee Kok v Teh Liang Teik & Ors* [2010] 3 MLJ 82, [2010] 5 CLJ 605;
- *Prem Singh & Ors v Kirpal Singh* [1989] 2 MLJ 89
- *Re Catchcart* [1892] 1 Ch 549.

DATED 26 FEBRUARY 2024

(ROZ MAWAR ROZAIN)
JUDICIAL COMMISSIONER
HIGH COURT OF MALAYA
KUALA LUMPUR

Counsel:

For the plaintiffs - Abu Daud Abd Rahman & Nik Amalia Suraya Nik Muhammad Saifuddin; T/n Azmi & Associates

For the 1st & 3rd defendants - Shanta Mohan P Baiasubramaniam; T/n Chambers of Shanta Mohan

For the 2nd defendant - Michele Navinder Kaur; T/n Sun & Michele