

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
IN THE FEDERAL TERRITORY, MALAYSIA
CIVIL DIVISION
[CIVIL SUIT No: WA-22NCvC-710-12/2022]**

BETWEEN

LIM POH CHUAN

[NRIC No: 730628-07-5257]

... PLAINTIFF

AND

LIM POH LEONG

[NRIC No: 570720-07-5727]

... DEFENDANT

GROUND OF JUDGMENT

Introduction

[1] This is a case concerning inheritance rights and the administration of an estate. At its heart lies a dispute between two individuals - the Plaintiff whose introduction to the Defendant was vide this suit - over their purported relationship to the deceased, Lim Kean Chie, who passed away intestate almost 35 years ago on 22.8.1989.

[2] This Court is to determine whether the Plaintiff has legitimate standing to claim a share in the deceased's estate, which has been under the Defendant's administration since 10.7.1990. This case also raises important questions about the burden of proof in establishing biological relationships and inheritance rights when such claims are made decades after the demise of the deceased and the letters of administration have been granted.

[3] The core dispute centres on whether the Plaintiff, having waited 32 years after the grant of Letters of Administration to the Defendant, can now assert his claim as an alleged biological son of the deceased and whether he qualifies as a beneficiary under the Distribution Act 1958. The Plaintiff filed this suit on 14.12.2022.

Facts Pleaded

[4] The factual matrix of this case spans over three decades and can be summarized as follows:

- (a) The Defendant was granted Letters of Administration for the estate of his father, the deceased on 10.7.1990. At the time of the application for the said Letters of Administration, the Defendant represented himself as the sole legitimate child of the deceased and his lawful wife (the Defendant's mother DW3).
- (b) The Defendant's parents were legally married on 20.3.1957, and remained married until the deceased's passing in 1989. Throughout their marriage, they maintained a single-family home at No. 143 Batu Lanchang Lane, Penang.
- (c) 32 years after the Letters of Administration were granted, the Plaintiff, emerged with a claim that he too is a biological child of the deceased. To support this claim, the Plaintiff produced a photocopy of his birth certificate which purportedly names the deceased as his father.
- (d) The Defendant vehemently denies knowledge of the Plaintiff's existence and challenges the authenticity and veracity of the birth certificate. The Defendant maintains that he is the only legitimate child of the deceased and that his father remained faithful to his marriage with DW3.

Pre-Trial Position

[5] Prior to this trial, the Plaintiff made an application (Enclosure 28)

seeking an order for DNA testing to establish biological relationships between the parties. This was pursuant to the Defendant's refusal to submit to such DNA testing, contending that the Plaintiff was not interested to establish kinship but was hunting for monetary opportunities.

[6] This Court heard and dismissed that application on 3.1.2024, holding that there was no legal basis to compel DNA testing between adults in civil proceedings of this nature. The Court also noted that the burden lies with the Plaintiff to prove his claim of biological relationship through admissible evidence.

[7] The present trial therefore proceeded with the Plaintiff bearing the burden of establishing his claimed relationship with the deceased through conventional means of proof, having to overcome not only the evidential hurdles but also explain the 32-year delay in making his claim.

The Legal Framework

[8] The outcome of this case will not only affect the parties' immediate interests but may also have implications for future inheritance disputes where claims are made long after the initial administration of estates. The present claim engages several areas of law that require careful consideration:

- (a) The Distribution Act 1958: The Plaintiff's claim is fundamentally based on s. 3 of the Distribution Act 1958, which governs the distribution of estates of persons who die intestate. Under this Act, legitimate children of the deceased are entitled to a share of the estate. However, the Act must be read in conjunction with the rules regarding burden of proof and evidence.
- (b) The Probate and Administration Act 1959: The administration of the deceased's estate was carried out under this Act, which governed the initial grant of Letters of Administration to the Defendant in 1990. The law under s. 36 of the Act provides for

the revocation or amendment of such grants where sufficient cause is shown.

- (c) The Evidence Act 1950: The evidential burden in this case is particularly significant. The law under s. 101 of the Evidence Act 1950 places the burden of proving a fact on the party who asserts it. In this context, the Plaintiff bears the burden of proving his claimed biological relationship with the deceased.
- (d) The Limitation Act 1953: When the right of accrual to pursue the claim must commence by 12 years of the date of the deceased's demise which ought to have been 22.8.2001. This Court will determine whether the Plaintiff is still permitted to pursue this claim that he had filed on 14.12.2022.

Key Issues for Determination

[9] Full trial presided by this Court to enable it to determine the following issues:

- (a) Whether the Plaintiff's claim is time-barred under s. 23 of the Limitation Act 1953;
- (b) Whether the Plaintiff has established fraud to postpone the limitation period under s. 29 of the Limitation Act 1953;
- (c) Whether the Plaintiff qualifies as an "issue" entitled to inherit under s. 6 of the Distribution Act 1958;
- (d) Whether the Letters of Administration granted to the Defendant should be revoked and the estate redistributed.

Preliminary Observations

[10] Before proceeding, to analyse the evidence, several preliminary observations are pertinent:

- (a) The timing of the Plaintiff's claim - the 32-year delay between

the grant of Letters of Administration and the filing of this claim is extraordinary and requires compelling explanation. While there is no strict limitation period for claims of this nature, the delay affects the quality and availability of evidence, and potentially the credibility of the claim itself.

- (b) The evidential challenge - the passage of time presents significant evidential challenges. Key witnesses, including the deceased himself and potentially others who might have had direct knowledge of the claimed relationship, are no longer available to testify. This places greater scrutiny on the documentary evidence that remains. The credibility of the witnesses must also be accorded due regard.
- (c) The standard of proof - while this is a civil matter requiring proof on a balance of probabilities, given the serious nature of the allegations - which effectively challenge the legitimacy of an administration that has stood for over three decades - the evidence must be clear and convincing.

[11] These preliminary matters form the backdrop against which the specific evidence and arguments must be evaluated. This Court now turns to examine the evidence presented by both parties.

The Law and Analysis

The Limitation Issue

[12] The law provided by s. 23 of the Limitation Act 1953 is reproduced herein for easy reference:

“...no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after the expiration of twelve years from the date when the right to receive the share or interest accrued...”

[13] The Plaintiff argued that limitation was not properly pleaded by the Defendant as required by s. 4 of the Limitation Act 1953. However, this Court finds that limitation was adequately raised through:

- (a) The Defendant's Defence at paragraph 12(a) regarding the 32-year delay;
- (b) The Defendant's striking-out application dated 15.2.2023 and all the causes papers in relation thereto;
- (c) Extensive cross-examination during trial by the Defendant's counsel without objection from the Plaintiff.

[14] Following the Federal Court's decision in *Re Estate of Choong Lye Hin* [1977] 1 MLJ 96; *Re Estate of Choong Lye Hin*, there is no requirement to mention the Limitation Act by name, provided the Plaintiff is not taken by surprise. Here, the limitation defence was consistently maintained from pre-action through trial. Therefore, this Court will consider the issues on whether the limitation period applies to the Plaintiff's case or if so, whether he has proven fraud to be exempted from the said application of the limitation period.

Evidence and Findings

[15] The Plaintiff's claim that he is the deceased's biological son rests primarily on:

- (a) His birth certificate listing the deceased as the father; and
- (b) Testimony of his mother PW4 regarding:
 - A claimed tea ceremony (with only PW4's mother present);
 - Alleged cohabitation at No. 34 Gelugor Green, Penang;
 - Monthly maintenance of RM1,000.
- (c) A photograph that the Plaintiff claims showing him as a child

with the deceased;

- (d) A 1986 letter allegedly from the deceased.

[16] The Defendant disputes these claims and presented evidence that:

- (a) The deceased was legally married to his mother from 20.3.1957 until his death;
- (b) The deceased continuously resided at No. 143 Batu Lancang Lane, Penang with his legal family;
- (c) There was no evidence of any customary marriage ceremony beyond the claimed simple tea ceremony which was not corroborated by any other evidence whether directly or indirectly;
- (d) No independent documentation of cohabitation or maintenance was produced.

[17] Having carefully assessed the evidence, this Court finds several critical problems with the Plaintiff's case. On the legitimacy of marriage between the deceased and PW4, the facts in *Tan Kah Fatt v. Tan Ying* [2023] 2 MLJ 583; [2023] 2 MLRA 525; [2023] 2 CLJ 169; [2023] 1 AMR 829 can be distinguished. In that case, there was clear evidence of a Chinese customary marriage with family and friends. There was also 3 years of documented cohabitation. Evidence showed the mother's reasonable belief in a valid marriage.

[18] Here, in this case, the evidence falls far short for many reasons. The claim of a customary marriage with tea ceremony cannot be substantiated by any other evidence. No traditional gifts or rituals were documented. Quite important, there was no evidence of any community or family recognition. The contention of the relationship had occurred while the deceased was married to the Defendant's mother DW3, with PW4 aware of this fact. Though this last point on its own would not necessarily mean that it was not possible for the deceased and PW4 to have entered into a

relationship, but in the scheme of things and circumstances in this case, it does not go to strengthen the Plaintiff's contention. Moreover, DW3 testified that she and the deceased had never lived apart.

[19] While that single photograph shows the 3 individuals together at what appears to be a lunch reception, this Court finds it insufficient to establish paternity for several reasons:

- (a) A single photograph, standing alone, proves only that the individuals were present together on one occasion;
- (b) The photograph must be viewed in context with other evidence, particularly:
 - (i) The evidence from the Defendant's mother DW3 that she frequently played cards at the Plaintiff's family home
 - (ii) PW3's (the Plaintiff's cousin) testimony that their families were customers at his father's sundry shop
 - (iii) The admitted social connections between the families in the same neighbourhood
- (c) More tellingly, if there was a genuine father-son relationship as claimed, one would reasonably expect:
 - (i) Multiple photographs over the years documenting the relationship;
 - (ii) Evidence of family gatherings or celebration;
 - (iv) Evidence of involvement in the Plaintiffs' schooling or other milestone;

yet no such documentary evidence or otherwise was produced.

[20] As for the 1986 letter - while the Plaintiff testified that it showed that the deceased "*really cared for me and my mother*", this Court finds several

problems with relying on this document to establish paternity. The timing is significant - this single letter allegedly came in 1986, when the Plaintiff was already 13 years old. If there was a genuine father-son relationship, one would expect regular correspondence, cards for birthdays or festivals or communication of the like, school report acknowledgments. However, this only letter appears to be an isolated communication.

[21] The content and context remain unexplained. The Plaintiff has not produced the original for verification. No expert evidence was called to authenticate the handwriting. The circumstances prompting this single letter after 13 years are unclear. This letter appeared in Part C of the Bundles of Documents for the purposes of trial.

[22] On a balance of probabilities, while these pieces of evidence show some form of connection between the families, they fall far short of establishing, on a balance of probabilities, that:

- (a) The deceased acknowledged the Plaintiff as his son;
- (b) There was any continuous parent-child relationship;
- (c) The deceased intended to include the Plaintiff as his heir.

[23] When weighed against the concrete evidence of the deceased's legal family life - his registered marriage, permanent residence, and consistent presence at No. 143 Batu Lancang Lane, Penang - these isolated pieces of evidence appear more consistent with the social connections that existed between neighbouring families than proof of paternity.

[24] Therefore, on a critical question of whether a Chinese customary marriage existed between the deceased and PW4, and consequently whether the Plaintiff is a legitimate issue, this Court finds that the evidence before this Court is unsatisfactory and inadequate for a finding on a balance of probabilities that the deceased married PW4 via a Chinese customary marriage. Conspicuously absent is the evidence of the traditional three essential ceremonies - betrothal, wedding and tea ceremony (as opposed to

the claimed of a simple tea ceremony with just DW4's mother presence), the exchange of customary gifts, the presence of both families, any wedding feast or celebration, any announcement to the community, and any recognition by the deceased's family.

[25] Most significantly, whilst a specific time was not proven to this Court, it was claimed that it happened when the deceased was still legally married to DW3 which was within PW4's knowledge and there was semblance of social interaction over games of cards. These circumstances negate any possibility of a reasonable belief in a valid marriage between the deceased and PW4.

[26] On the question of the Plaintiff's legitimacy, the birth certificate on its own cannot establish legitimacy because there was no evidence that the deceased was present at the registration. There was no proof that the deceased consented to or knew of the registration of the Plaintiff's birth certificate. There is no evidence that the deceased had ever acknowledged it.

[27] Having carefully weighed all the evidence, the Plaintiff has failed to establish on a balance of probabilities that there was a valid customary marriage between the deceased and PW4, that he was recognised as a legitimate child of the deceased and that he qualifies to be an issue entitled to inherit under the Distribution Act 1958. On these grounds alone, parking the limitation issue aside, the Plaintiff's claim fails.

Witnesses and their Credibility

Evidence of PW3

[28] He had appeared as a witness for the Plaintiff. His testimony requires careful analysis given his connections to both parties. From his testimony, this Court finds that he identifies as the Plaintiff's cousin. His father ran a sundry shop at No. 1 Jalan Padang Tembak, Penang. He seemed to know both families as his father's customers. He was a teenager when he knew the deceased.

[29] The facts borne by his testimony includes the confirmation that the deceased and his family (referring to the Defendant and DW3) lived at No. 143 Lorong Batu Lancang. He testified that DW3 came over to his house to play cards. According to PW3, the deceased was a stern man who spoke little. He was the one who alerted the Plaintiff about the potential sale of Limburg in 2019 and it was him who had accompanied the Plaintiff to consult lawyer about potential inheritance rights.

[30] In assessing PW3's credibility as a witness, this Court notes that he gave direct evidence of matters within his personal knowledge. His testimony about the deceased's residence at No. 143 Lorong Batu Lancang aligns with other evidence. He did not attempt to exaggerate his knowledge of the deceased, admitting he "*did not know him well*" and he was consistent under cross-examination.

[31] Nevertheless, there are apparent problematic aspects whereby despite claiming to be the Plaintiff's cousin, he made no inquiries about inheritance rights for over 30 years. His interest in the matter only arose when learning about valuable property. This Court cannot escape the observation vide his demeanour at trial that his relationship with the Plaintiff suggests potential bias.

[32] Most significantly, PW3's evidence about the deceased's family arrangement actually supports the Defendant's case. He consistently referred to the Defendant and DW3 as the deceased's family. He confirmed their permanent residence at No. 143 Lorong Batu Lancang. His evidence of DW3 playing cards at their house demonstrated open family relationships that contradicts any suggestion of a secret second family.

[33] Though this Court finds PW3 generally credible regarding factual matters within his knowledge, his testimony, taken as a whole, does not advance the Plaintiff's claim of legitimacy. If anything, his evidence of the deceased's living arrangements and family life tends to support the Defendant's position.

Evidence of PW2

[34] PW2 appeared as another witness for the Plaintiff. His evidence requires particular scrutiny given how he came to be involved in this matter. From his testimony, he had no prior knowledge of the Plaintiff. He first came to know of the Plaintiff through the Plaintiff's solicitors in April 2022. He had only spoken to the Plaintiff for the first time on 2.5.2022. PW2 claimed a family connection as the great-grandson of Lim Cheng Teik. He claims that his grandfather was Lim Kean Cheang, allegedly the deceased's older brother.

[35] His testimony primarily focused on providing documents relating to the ELCEETEE Trusts A, B, C & D, explaining the trust distributions, and identifying documents about trust assets and distributions.

[36] There are several concerning aspects about this witness's evidence - the source of documents he had produced at trial spanned from 1950 to 1998. These were allegedly kept by him "*for more than 20 years*". Still, he provided no explanation for why he maintained these records. There was no clear explanation of his role or authority regarding these documents.

[37] Despite claiming to be part of the extended family, PW2 had no knowledge of the Plaintiff. He appeared only after the Plaintiff's solicitors contacted him. His sudden willingness to provide extensive documentation raises questions about his motivation.

[38] What surfaced as most problematically is that PW2 did not explain his role in the ELCEETEE Trusts. He did not offer to elaborate on his authority to keep or disclose trust documents or even why he maintained these specific records. He had not satisfied this Court on the preservation of the chain of custody of these documents over 20 years.

[39] There was also the convenient timing of his involvement. PW2 had appeared precisely when the Plaintiff needed trust documentation. He had also produced exactly the documents needed to show trust distributions. Yet PW2 has no other family knowledge or connections to verify the Plaintiff's claims.

[40] While the documents he produced may be genuine, this Court finds his evidence regarding their providence and context lacks credibility because he has no personal knowledge of the matters in dispute. Furthermore, his involvement appears orchestrated rather than organic. His testimony seemed calculated to establish trust values rather than assist with the core issue of the Plaintiff's legitimacy. He, too, demonstrated no independent knowledge that could verify the Plaintiff's claims about his relationship with the deceased.

[41] Given these concerns, although this Court does not entirely discount the documents produced through this witness, this Court treats his evidence with considerable caution and give it limited weight in determining the central issues of this case.

The Plaintiff - PW1

[42] This Court considers his explanation for the 32-year delay in pursuing his claim. He claimed that the deceased was his biological father. The Plaintiff admitted he "*did not know him as a person*". He claimed that the deceased visited "*infrequently*" for "*a couple of days each time*". He also claimed that he had received maintenance which was "*sometimes interrupted for reasons I did not know.*"

[43] The Plaintiff testified that he had learned of the deceased's death when he had received an anonymous phone call in 1989. According to him, he was told not to attend the funeral. He made no inquiries about the estate at the time when he was approximately 16 years old.

[44] As to his later actions, he made no inquiries about inheritance for over 30 years. The Plaintiff had only investigated after learning about Limburg property in 2020. He then wrote to the Defendant in 2022 seeking information and then commenced this action in December 2022.

[45] Several aspects of the Plaintiff's testimony raise serious credibility concerns:

- (a) The delayed claim: his explanation that he thought his father “died a pauper” is difficult to reconcile with:
 - o Knowledge the deceased was Lim Cheng Teik’s son;
 - o Evidence of the deceased’s car ownership;
 - o The deceased’s residence in a substantial property;
 - o Regular maintenance payments of RM1,000 in the 1980s.
- (b) The anonymous phone call that relayed the unfortunate news of the demise: there was no explanation for who would know to call him about the death. There was neither any attempt to verify the instruction not to attend the funeral. The Plaintiff made no inquiries with his mother - PW4’s family who knew the deceased’s family.
- (c) There were inconsistencies regarding contact with the deceased: on one hand the Plaintiff claimed that he had minimal knowledge of deceased yet produced one personal letter. He stated that there were infrequent visits yet claims regular maintenance. There was no evidence of any attempts to maintain contact during deceased’s lifetime.
- (d) Most problematically, the timing of the Plaintiff’s claim significantly undermines his credibility. He had only pursued investigations into the deceased’s estate after learning about valuable property, discovering the existence of the ELCEETEE Trust, and becoming aware of substantial trust distributions.
- (e) The Plaintiff’s own evidence reveals that his action was prompted by financial considerations rather than any genuine desire to establish his status as the deceased’s son.

[46] The Court is particularly troubled by the Plaintiff’s admission under cross-examination that his fraud allegation against the Defendant was

merely an “*assumption*”. His failure to provide any compelling explanation for why, as a teenager of 16 and then an adult, he made no inquiries about his alleged father’s estate is harmful to his credibility. The fact that he did not seek legal advice earlier nor took any steps to assert his claimed rights raises reasonable suspicion as to the sincerity of his claims.

[47] While the Plaintiff appeared generally forthright in giving evidence, the substantive content of his testimony, particularly regarding the long delay and his reasons for finally pursuing the claim, lacks credibility when viewed objectively against the totality of evidence. This Court finds that his testimony, rather than establishing his claim, raises more questions than it answers about the true nature of any relationship with the deceased.

[48] Before this Court states its assessment on the credibility of the Defendant, it is useful to understand the rather limited evidence of some substantial family wealth that seemed to centre around the ELCEETEE Trusts and Lim Cheng Teik’s estate. This Court finds that understanding these elements provides crucial context for the timing and nature of the Plaintiff’s claim.

The ELCEETEE Trusts

[49] From the evidence, this was created by Lim Cheng Teik on 26.1.1950 that comprised Trusts A and B (which concern this case) and Trusts C and D. This Court noted that some key provisions included:

- (a) Trust period of 20 years after settlor’s death;
- (b) The deceased’s interest came under Clause 2(b) as one of the settlor’s sons;
- (c) If a beneficiary died intestate before distribution, their share was to be held for their children in equal shares;
- (d) Significant distributions occurred on 10.11.1998:
 - (i) Capital Distribution: RM13,294,639;

- (ii) Investments Distribution: RM2,923,914;
- (iii) Ban Teik Bee Company shares: 152 units.

The Limburg Property Connection

[50] The triggering event for this litigation was news about the Limburg property located at No. 52 Larut Road, Penang. It is a mansion owned by Lim Cheng Teik and leased to Kentucky Fried Chicken. The news of potential sale appeared in 2019.

[51] The significance of the Limburg property lies not in its direct connection to this case, but rather in how it prompted the Plaintiff's investigations when his cousin PW3 alerted him to news of the potential sale. That led to inquiries about potential inheritance rights. The timing strongly suggests the claim was motivated by discovery of valuable assets rather than genuine desire to establish filial relationships.

Lim Cheng Teik

[52] Lim Cheng Teik emerges as the patriarchal figure behind the family wealth who had created the ELCEETEE Trusts in 1950. He was the father of the deceased and the owner of substantial assets including the Limburg property. His death on 11.11.1978 triggered the 20-year trust period.

[53] The timing of events is telling:

- o Lim Cheng Teik died on 11. 11.1978;
- o The deceased died on 22.8.1989;
- o Trust distribution date was 10.11. 1998;
- o Limburg sale news was circulated in 2019;
- o The Plaintiff's claim was filed on 14.12.2022.

[54] This chronology reveals that the Plaintiff took no action during the deceased's lifetime or in the immediate period after the deceased's death.

Nor did he take any action during the trust distribution period or even the subsequent 20 over years. Evidence show on a balance of probabilities that the only the prospect of valuable property had prompted the Plaintiff's investigation and thereafter the filing of this claim.

[55] This sequence of events, and particularly the catalyst of the Limburg property news, substantially undermines the credibility of the Plaintiff's claim to be asserting legitimate filial rights rather than pursuing newly-discovered financial interests.

The Defendant - DW1

[56] The Defendant's testimony and demeanour deserve particular attention as the lawful administrator of his father's estate and the person accused of fraud in obtaining the Letters of Administration.

[57] His core testimony centred on his family life with the deceased and his mother DW3, their continuous residence at No. 143 Batu Lancang Lane, Penang, his complete lack of knowledge about the Plaintiff's existence until 2022, and his handling of the estate administration.

[58] Several aspects of the Defendant's testimony stand out positively. He offered this Court at trial a consistent account. He had maintained the same position from his initial affidavit in the interlocutory proceedings through the trial. The Defendant did not embellish or exaggerate his evidence. He also readily acknowledged matters outside his knowledge. He had demonstrated clear recall of family life details.

[59] As to his emotional authenticity, this Court observed that he was visibly affected by allegations against his father's/the deceased's character. He showed genuine distress at suggestions of a second family involving the deceased. Yet he had maintained composure and responded measured throughout the cross-examination. He did not display anger or hostility despite serious allegations.

[60] On his administrative conduct of the deceased's estate, the Defendant

had properly documented the deceased's estate matters. He made appropriate amendments when required (e.g., for Phuah Hin Leong estate distributions). There was no dispute that he had not kept proper records regarding the administration of the deceased's estate. He had also complied with administrative requirements.

[61] Most notably, the Defendant's response to cross-examination about knowledge of the Plaintiff was particularly testifying from the witness stand:

"We do not know that my father had another son."

(Notes of Proceedings dated 22.8.2024, page 21, lines 12-17)

[62] This simple, direct response carries significant weight because it was delivered without hostility or defensiveness. The Defendant's response remained consistent throughout questioning. If untrue, it would have been an unnecessarily absolute denial. Moreover, it aligns with all other evidence about the deceased's family life.

[63] The Defendant's credibility is further enhanced by his conduct as administrator (he had applied for proper estate amendments, maintained transparency with authorities, responded to official inquiries, and made proper declarations to the Estate Duty Department). His reaction to the claim (he responded reasonably to Plaintiff's letters, did not attempt to hide or destroy documents, he had participated fully in proceedings, and he had maintained a dignified demeanour throughout) further boosted his credibility in this Court's eyes.

[64] Most significantly, the Plaintiff's own mother PW4 admitted she did not know whether the Defendant knew about her or her son, corroborating the Defendant's position of complete ignorance about their existence.

[65] This Court therefore finds the Defendant to be a credible witness who, despite the personal nature of the allegations and their impact on his father's (the deceased) memory, maintained his composure and provided consistent,

measured evidence throughout. His testimony aligns with the documentary evidence and the admitted facts of other witnesses, including some of the Plaintiff's own witnesses. (See Federal Court's 23 decision in *Md Zainudin bin Raujan v. Public Prosecutor* [2013] 3 MLJ 773; [2013] 4 CLJ 211; [2013] 3 AMR 480; Court of Appeal's decision in *CGU Insurance Bhd v. Asean Security Paper Mills Sdn Bhd* [2006] 3 MLJ 1; [2006] 2 CLJ 409; [2006] 2 AMR 641; High Court's decision in *Public Prosecutor v. Dato' Seri Anwar Bin Ibrahim (No 3)* [1999] 2 MLJ 1; [1999] 2 CLJ 215.

PW4 and DW3 (the respective mothers of the Plaintiff and the Defendant)

[66] The problems with PW4's testimony aside from having claimed that the deceased provided monthly maintenance of RM1,000 but did not produce any proof, can be seen in her cross-examination on 19.8.2024. She could not explain why she never approached the deceased's family after his demise. She claimed "*she did not want to create havoc*" but changed her explanation to having suffered a stroke (not previously pleaded) when pressed at trial. She provided inconsistent accounts about knowledge of the deceased's death. Her admission that she knew the deceased was married to DW3 yet proceeded with the alleged customary ceremony transformed her narrative from one of innocent belief in a valid marriage to knowing participation in an alleged extra-marital relationship.

[67] DW3's evidence was markedly different in quality. She was clear, consistent and her evidence was supported by documentary proof and independent witnesses. Her testimony also aligned with official records. She answered cross-examination questions directly, unhesitatingly, and consistently. DW3 was not defensive.

[68] Consideration was also made to the Plaintiff seeking the revocation of the Letters of Administration granted to the Defendant on 10.7.1990. There must be sufficient cause to revoke them. See s. 34 Probate and Administration Act 1959 and the High Court's decision in *Guindarajoo a/l Vengadason v. Satgunasingam a/l Balasingam* [2010] 4 MLJ 842; [2010] 1

MLRH 350; [2010] 6 CLJ 954. In this case, there is no strong evidence of any misconduct by the Defendant as the administrator of the deceased's estate. There was no clear proof of inaction or want of diligence, and no evidence of dishonesty or conflict of interest on the part of the Defendant.

[69] The Plaintiff's allegation of non-disclosure on the ELCEETEE Trusts distributions is not accepted as it occurred in 1998, after the grant and were properly documented when received. That, to this Court's mind, cannot be grounds for alleging fraud in the Letters of Administration issued in 1990.

[70] Additionally, this Court found that the Phuah Hin Leong estate was properly amended in the Schedule of Assets and appropriate declarations were made. The distribution seemed properly recorded. With regard to the 2013 allegations, these were not properly pleaded and no evidence was produced by the Plaintiff. This Court refuses to consider this - see *Janagi v. Ong Boon Kiat* [1971] 2 MLJ 42; [1971] 1 MLRH 360.

[71] This Court concludes that there is no evidence of fraud or impropriety in obtaining the Letters of Administration and no failure on the part of the Defendant in estate administration. There is no ground whatsoever to revoke the Letters of Administration. The Defendant had discharged his duties as an administrator accordingly.

Court's Conclusion

[72] This credibility assessment significantly influences my findings on the fraud allegation and the validity of the Letters of Administration. Premised on the evidence, the findings and the legal position, this Court concludes that the Plaintiff's claim is barred by limitation under s. 23 Limitation Act 1953, having been brought very much well after the 12-year limitation period. (See High Court's decision in *Teoh Ah Cha @ Teoh Sik Sen & Ors v. Huatson Sdn Bhd & Ors* [2018] MLJU 999 and *Soon Choon Sim v. Soon Cheng Sai & Ors* [2011] MLJU 116). The Plaintiff has not established fraud to postpone the limitation period under s. 29 Limitation Act 1953. Evidence clearly shows that the Defendant had no knowledge of the existence of the Plaintiff when obtaining the Letters of Administration.

[73] Even if limitation did not apply, the Plaintiff has failed to establish that he qualifies as an “issue” entitled to inherit under the Distribution Act 1958. The case is materially distinguishable from the facts in *Tan Kah Fatt* (supra). The evidence in this case of legitimacy and marriage is wholly inadequate, especially when compared to the requirements established in previous cases.

[74] This Court finds and concludes that the Defendant had obtained and administered the Letters of Administration properly and honestly, with no evidence of fraud or suppression of material facts.

This Court’s Order

[75] Accordingly, the Plaintiff’s claim is dismissed. Costs of RM30,000 is awarded to the Defendant. The Letters of Administration dated 10.7.1990 shall continue in full force and effect.

Dated: 20 JANUARY 2025

(ROZ MAWAR ROZAIN)
JUDGE
HIGH COURT OF MALAYA
KUALA LUMPUR

Counsel:

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For the defendant - Kevin Wu Khai Woon & Tan Zu Hao; M/s Kevin Wu & Associates