

**DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM  
DALAM NEGERI SELANGOR DARUL EHSAN  
[GUAMAN NO. BA-22NCvC-111-03/2021]**

**ANTARA**

**KOH AH HWOI @ KOK AH HOI**

[NO. K/P: 391216-10-5137]

**... PLAINTIF**

**DAN**

**1. COLUM AIWAH MCNAMARA**

[NO. SIJIL KELAHIRAN IRELAND 1798]

**2. LEE SUAN CHOO**

[NO. K/P: 390214-07-5347]

**... DEFENDAN-DEFENDAN**

**JUDGEMENT**

**Introduction**

1. The Sixth Plaintiff's witness, Koh Chew Ling, a brother of Koh Chew Yoong, the Deceased, made an impassioned plea before this Court, urging that justice be done for his late brother. He implored that due recognition be given to what he believes to be the deceased's final wishes, as expressed in his last testamentary will. This Court reassures Koh Chew Ling, and all parties directly or indirectly involved in this suit, that its only concern is to determine and give effect to the testamentary intentions of the Deceased, as embodied in the will or wills presently in contention, in accordance with the law.
2. At its core, the present dispute is one between the siblings of the Deceased on one side, and his nephew-in-law and sister-in-law on the other. Each faction seeks to propound a different will of the

Deceased, asserting that the will they rely upon represents his true and final testamentary intention.

### **The Issues**

3. With the Plaintiff and the First Defendant in the present proceedings propounding a different will, the overriding issue in this suit is whether the impugned 27 June, 2008 Will ("the impugned 2008 Will") or the impugned 9 March, 2019 Will ("the impugned 2019 Will") is the "proper, valid and enforceable will".

4. In particular, the issues to be tried between the Plaintiff and the First Defendant, as framed in Enclosure 45 are:

1. Whether the Will dated 9 March 2019, propounded by the Plaintiff:

(a) is a forged will;

(b) was not duly prepared and executed in accordance with the Wills Act 1959;

(c) is surrounded by suspicious circumstances; and

(d) was prepared without the knowledge and consent of the Deceased.

and if the answers to the above questions are in the affirmative:

2. Whether the First Defendant is entitled to claim any damages from the Plaintiff.

5. On the other hand, the issues to be tried between the Plaintiff and the Second Defendant, as framed in Enclosure 45 are:

1. Whether the Will dated 9 March 2019, propounded by the Plaintiff:

(a) is a forged will;

- (b) was not duly prepared and executed in accordance with the Wills Act 1959;
- (c) is surrounded by suspicious circumstances; and
- (d) was prepared without the knowledge and consent of the Deceased.

and if the answers to the above questions are in the affirmative:

2. Whether the Second Defendant is entitled to claim any damages from the Plaintiff:
  - (a) when the Plaintiff trespassed and/or instigated Koh Chew Ling to trespass into the Kuantan house; and
  - (b) when the Plaintiff removed, retrieved, and retained or instigated Koh Chew Ling to remove, retrieve, and retain documents such as the Second Defendant's medical records without the Second Defendant's consent.

### **Persons Relevant to the Dispute**

6. The Deceased, Koh Chew Yoong, passed away without leaving any parents, spouse or issues.
7. The Deceased passed away on or about 16 October, 2020 in Kuantan.
8. The Deceased was predeceased by his parents and his wife, Frances Lee Suan Gaik. Frances Lee Suan Gaik had passed away on or about December, 2007.
9. Koh Chew Yoong is survived by his 8 siblings, namely:
  - (i) Koh Ah Hwoi @ Kok Ah Hwoi (Plaintiff);
  - (ii) Koh Siew Ching @ Ah Ching;
  - (iii) Ko Siew Kim;

- (iv) Koh Chaw Huah;
  - (v) Koh Siew Hong;
  - (vi) Koh Chiew Ling @ Koh Chuw Ling;
  - (vii) Koh Chew Kien; and
  - (viii) Koh Chew Lak
10. The Deceased was the third child in the family, and the siblings listed above are his only surviving blood relatives.
  11. The Plaintiff is the elder brother of the Deceased.
  12. The First Defendant is the nephew-in-law of the Deceased. He is the son of one of the Deceased's late wife's sisters.
  13. The Second Defendant is the sister-in-law of the Deceased. She is one of the sisters of the Deceased's late wife. She is the aunt of the First Defendant.

### **The Tussle over the Estate and the Contest of Wills**

14. Upon the Deceased's passing, the First Defendant applied for a Grant of Probate on 9 December 2020 (via Kuantan High Court Originating Summons No. CA-32NCvC-83-12/2020). This application was made by the First Defendant in his capacity as the executor named in the impugned 2008 Will.
15. Subsequently, on 30 December 2020, the Plaintiff lodged a caveat against the Deceased's estate at the Kuala Lumpur High Court (WA-KAVEAT-2701-12/2020).
16. This led to the First Defendant filing a Warning to Caveator (Form 165) against the Plaintiff on 20 January, 2021, pursuant to Order 71 rule 37 of the Rules of Court 2012.

17. In response, the Plaintiff filed a Notice of Appearance (Form 166) on 8 February, 2021.
18. The dispute between the Plaintiff and the Defendants culminated in the filing of the present Writ action on 16 March, 2021 (subsequently amended on 15 April 2021).
19. At the centre of this dispute are two competing wills: the impugned 2019 Will propounded by the Plaintiff, and the impugned 2008 Will propounded by the First Defendant.

### **The Plaintiff's Case**

20. The Plaintiff's case is that the impugned 2019 Will represents the Deceased's final testamentary disposition. In the alternative, the Plaintiff contended that the impugned 2019 Will should be treated as a codicil to the earlier impugned 2008 Will.
21. The Plaintiff submitted that the evidence adduced before this Court support the authenticity and validity of the impugned 2019 Will.
22. In support of his case, the Plaintiff relied on and emphasized the following factual circumstances:
  - that the said Deceased placed great importance to Chinese customs, traditions, practices, family hierarchy and filial piety.
  - that the Deceased passed away leaving no spouse, issues or parents.
  - that the Deceased has 8 surviving siblings.
  - that the Plaintiff is the eldest brother of the Deceased and his other siblings.
  - that both the First and Second Defendants are not blood-related to the Deceased.

- that the First Defendant is the nephew-in-law of the Deceased, that is, the First Defendant is the son of the Deceased's late wife's sister.
  - that the Second Defendant is the sister-in-law of the Deceased, that is, the Second Defendant is the Deceased's late wife's sister (the First Defendant is the nephew of the Second Defendant).
23. On the premise that the Deceased was a fair and principled individual, the Plaintiff argued that the impugned 2019 Will is consistent with the Deceased's character and values. In particular, as the Deceased had no spouse nor issues at the time of his passing, the impugned 2019 Will, which provides for his siblings, the Defendants, and even certain charitable organisations, is reflective of his equitable disposition.
24. Indeed, the impugned 2019 Will embodies what one may consider as a thoughtful and inclusive testamentary intention and one that may aptly be described as balanced, considered, and dignified in its generosity.

### **The Defendants' Case**

25. The Defendants strenuously challenged the authenticity, validity and enforceability of the impugned 2019 Will and maintained that the impugned 2008 Will was the deceased's last testamentary will.
26. It was contended by the First Defendant that the impugned 2008 Will:
- was a legitimate will duly drafted by the Deceased's lawyers, Messrs. Wong Law & Ti;
  - was duly executed by the Deceased and witnessed by Dato' Law Hui Wha and his legal clerk, Liom Lee Choo in the presence of one another; and

- the original copy of which was in the possession of Messrs. Wong Law & Ti.
27. The First Defendant further contended that the impugned 2019 Will, a photocopy purportedly executed on 9 March, 2019 was a homemade will and was not prepared by a firm of solicitors. The First Defendant also averred that the "original" or "original copy" of the impugned 2019 Will is unknown", in that it "only came into existence mysteriously after the First Defendant had filed his application for a Grant of Probate and after the First Defendant had issued a warning against the Probate Caveat entered by the Plaintiff and Koh Chew Ling" (the Deceased's younger brother and sixth Plaintiff's witness).
28. Other assertions made by the First Defendant include the fact that the impugned 2019 Will contains "properties which were "copied-pasted" from the list of assets attached to the Application for a Grant of Probate of the impugned 2008 Will filed by the First Defendant" and "assets that did not belong to the Deceased" in addition to the omission of some of the Deceased's other assets.
29. The First Defendant also advanced the argument that "as to who had prepared the impugned 2019 Will is unknown and it "had witnesses who were unknown to the Deceased".
30. In short, it was averred by the Defendants that the impugned 2019 Will is invalid because it was forged, not validly executed, prepared under suspicious circumstances and/or prepared without the Deceased's knowledge and approval.

### **Pre-Trial/Interlocutory Applications**

31. On 20 May, 2021, the First Defendant filed the Notice to Produce Document, that is, the impugned 2019 Will which was referred to in the Plaintiff's Statement of Claim pursuant to Order 24 rule 10 of the Rules of Court 2012.

32. This was followed by a request by the First Defendant for Further and Better Particulars on paragraphs 10, 14 and 16 of the Statement of Claim and the Plaintiff duly filed the particulars served pursuant to the request.
33. The Plaintiff filed his first Application to amend the Statement of Claim, on 20 July, 2023. The Defendants confirmed that they had no objection to the proposed amendment on 2 August, 2023. The proposed amendment was to add the following paragraph to the Statement of Claim:

29.2 Si Mati juga telah amat mementingkan adat, amalan dan/atau kepercayaan tradisi Cina termasuk kepercayaan/pandangan berhubung keluarga patriarki, memberi penghormatan kepada nenek-moyang keluarga dan pemujaan nenek-moyang.

[29.2 The Deceased also placed great importance to Chinese customs traditions, practices and/or traditional beliefs including the belief/notion of patriarchal family, paying respect to family ancestors and ancestral worship.]

34. The Plaintiff then filed his second Application for an extension of time to amend Paragraph 29 of the Statement of Claim and leave of Court to amend paragraphs 13, 14 and 27.1 of the Statement of Claim (Enclosure 119).

The amendments sought for paragraphs 13, 14 and 27.1 were as follows:

13. Pada atau sekitar Februari 2020 atau Mac 2020, Si Mati telah menyatakan kepada Plaintiff bahawa beliau baru-baru ini telah membuat Wasiat Terakhirnya (selepas ini dirujuk sebagai "Wasiat Sebenar") kerana beliau mempunyai firasat (premonition) mengenai kematiannya dan beliau sangat terganggu dengan perkara itu. Si Mati telah meminta Plaintiff

untuk memikul tanggungjawab sebagai Wasi untuk memenuhi hajat-hajat Si Mati.

14. Pada atau sekitar Februari 2020 atau Mac 2020, Si Mati telah meninggalkan satu salinan Wasiat Sebenar bersama Plaintiff. Namun begitu, Si Mati tidak memaklumkan kepada Plaintiff mengenai keberadaan salinan asal Wasiat Sebenar itu.

27.1 Wasiat Sebenar bertarikh 9.3.2019 telah dilaksanakan sewajarnya pada 9.3.2019 dan telah disaksikan oleh seorang Lee See Leng (No. K/P: 541120-10-5133) dan seorang, Poon Chem Kiang (No. K/P: 601020-10-5891) sekitar Februari 2020 atau Mac 2020.

[13. On or about February 2020 or March 2020, the Deceased had mentioned to the Plaintiff that he had recently made his Last Will (hereinafter referred to as "the True Will") as he had a premonition regarding his death and was very disturbed by it. The Deceased had requested the Plaintiff to shoulder the responsibility as Executor to honour the Deceased's wishes.

14. On or about February 2020 or March 2020, the Deceased left a copy of the True Will with the Plaintiff. However, the Deceased did not inform the Plaintiff as to the location of the original True Will.

27.1 The True Will dated 9.03.2019 was duly executed on and was witnessed by one, Lee See Leng (NRIC No.: 541120-10-5133) and one, Poon Chem Kiang (NIC No.:601020-10-5891) sometime in February 2020 or March 2020.]

35. The application to extend time was allowed by this Court but the leave to amend paragraphs 13, 14 and 27.1 of the Statement of Claim was disallowed (see *Kok Ah Hwoi @ Kok Ah Hoi v Colum Aiwah McNamara & Anor* [2024] AMEJ 1413; [2024] CLJU 1395; [2024]

MLJU 1476; [2024] MLRHU 1110 and the Grounds of Judgment in Enclosure 137).

### **Proceedings at the Trial**

**36.** The trial proceeded over 17 days. The dates were:

25 July, 2023; 2 and 3 August, 2023; 23, 24 and 25 August, 2023; 21, 22, 23, 26, 27 and 28 August, 2024; 20 and 21 January, 2025; and 7, 8 and 9, April 2025.

**37.** The Witnesses who testified at the trial were:

PW1 -Poon Chem Witness to the impugned 2019 Will  
Kiang:

PW2 -Lee See Leng Witness to the impugned 2019 Will

PW3 -Koh Ah Hwoi Plaintiff

PW4 -Geraldine Merle Wife of the Plaintiff, sister-in-law of the said Deceased.

PW5 -Rosemary Ng Wife of PW6, sister-in-law of the Plaintiff and the said Deceased.

PW6-Koh Chew Ling The younger brother of the Plaintiff and the said Deceased

PW7 -Siow Kwen Sia Expert Witness

DW1 -Tay Eue Kam Expert Witness

D1W1 -Colum Aiwah First Defendant  
McNamara

D1W2 -Liom Lee Choo Witness to the impugned 2008 Will

D1W3 -Law Hui Wha Witness to the impugned 2008 Will

D1W4 -Kevin Goh Advocate and Solicitor practicing in Ching Loong Messrs. Wong, Law & Ti

DW2 -Chan Sui Mei Branch Manager of HSBC Bank, Kuantan

D2W1 -Lee Suan Choo Second Defendant

**The Cause Papers**

38. The following were the cause papers filed in the present action.

<b>Document</b>	<b>Marking</b>	<b>Enclosure No.</b>
Bundle of Pleadings	Bundle A	Enclosure 21
Common Bundle of Documents (1) (Jilid 1 -Bahagian B)	Bundle B	Enclosure 36
Common Bundle of Documents (1) (Jilid 2 -Bahagian C)	Bundle C	Enclosure 37
Common Bundle of Documents (1) (Jilid 3 -Bahagian C)	Bundle D	Enclosure 38
Common Bundle of Documents (1) (Jilid 4 -Bahagian C)	Bundle E	Enclosure 39
Common Bundle of Documents (2)	Bundle F	Enclosure 44
Non-Agreed Bundle of Documents dated 27-7-2023	Bundle G	Enclosure 131
1st Defendant’s Bundle of Documents dated 31-7-2023	Bundle H	Enclosure 132
Photographs from Enclosures 37, 38, 39 & 131 dated 1-8-2023 (with dates	Bundle I	Enclosure 134

and descriptions redacted)		
Non-Agreed Bundle of Documents (2) dated 1-8-2023	Bundle J	Enclosure 135

**The Evidence before this Court**

- 39. In addition to the testimonies of the witnesses, both parties tendered photographs, correspondences, and a voluminous collection of documents in support of their respective cases.
- 40. This Court has carefully evaluated the entirety of the evidence before it. For clarity and coherence, the evidence is examined under the following thematic headings.

*A Picture Paints a Thousand Words -The Photos as Tendered*

- 41. A total of 282 photographs were tendered by the parties.
- 42. These photographs depict the Deceased with the Koh siblings and/or members of the Koh side of the family, as well as with the First and Second Defendants. As directed by this Court, the descriptive annotations on the photographs were redacted.

*A Word Evokes a Thousand Images -The Correspondences as Tendered*

- 43. A total of 63 letters, postcards, and greeting cards were also tendered in evidence. These correspondences form part of the contest to demonstrate the depth of affection between the Deceased and the respective parties.
- 44. Like the photographs, these writings were adduced to support the authenticity of the respective impugned Wills propounded by each party, each seeking to anchor their narrative in the sentiments and expressions exchanged with the Deceased.

*Of Strokes and Slants -The Handwriting Experts*

45. Both parties engaged handwriting experts to assess the authenticity of the signature affixed to the impugned 2019 Will.
46. The expert called by the Plaintiff opined that the signature in question was indeed authored by the Deceased. He identified 67 points of similarity in pen movement and structural characteristics, and concluded that there was no indication of tracing or forgery. Notably, his methodology was not challenged. The First Defendant agreed with his analytical framework, albeit not with his conclusion.
47. In contrast, the handwriting expert retained by the Defendants raised several critical concerns. First, she noted that the impugned 2019 Will was not an original but a multi-generational reproduction. Second, she observed that the Deceased's signature appeared to have been digitally reproduced, with no evidence of it having been executed in wet ink. Third, she opined that the signature was likely cut and pasted, and that the signatures of the attesting witnesses were also printed.
48. The most compelling concern arising from the Defendants' expert testimony was the indication that the Deceased's signature on the impugned 2019 Will had not been genuinely executed. Rather, it was likely cut and pasted and possibly traced or digitally extracted from a 2005 Sale and Purchase Agreement. Upon comparison, the expert noted that the two signatures were identical and nearly superimposable.

*Other Contemporaneous Documents*

49. A number of contemporaneous documents were also tendered into evidence. These include land titles, previous wills, a deed of gift, bank statements, credit card statements, and travel itineraries.

50. Some of these documents bear relevance to the issues at hand and will be referred to, where appropriate, in the section titled *Findings of this Court*.

### ***The Testimonies of the Witnesses***

51. On behalf of the Plaintiff, PW1 and PW2 testified that they were the attesting witnesses to the impugned 2019 Will.
52. Many a tear was shed, particularly when PW3, the Plaintiff, took the witness stand. The crux of his evidence was that the Deceased had always deeply valued familial bonds and expressed consistent concern for the welfare of the Koh siblings and their respective families.
53. The core of the First and Second Defendants' testimony was centred on the closeness of their relationship with the Deceased, which they maintained was personal and sustained over time.
54. The remaining witnesses, as might reasonably be anticipated, gave evidence which either supported or cast doubt upon the opposing party's case. The relevant portions of their testimony will be addressed in the ensuing section on *Findings of this Court*.

### **The Applicable Law and Principles**

55. The parties made references to numerous provisions in the Rules of Court 2012 and statutes.
56. For convenience, the salient provisions are set out below.
57. Chief amongst the provisions referenced in the Rules of Court is Order 73 rule 37, relating to caveats. It provides as follows:

Caveats (O. 71, r. 37)

- 37.(1) Any person who wishes to ensure that no grant is made without notice to himself may enter a caveat.

- (2) When a caveat is entered, the Registrar shall forward a copy of the caveat and give notice in Form 158 to the Registrar of the Principal Registry.
- (3) Any person who wishes to enter a caveat (which is referred to as "the caveator" in this rule) may do so by filing the caveat Form 164 in the Registry and obtaining an acknowledgement of entry from the proper officer, or by sending through the post at his own risk the caveat to the Registry.
- (4) Where the caveat is entered by a solicitor on the caveator's behalf, the name of the caveator shall be stated.
- (5) Except as otherwise provided by this rule, a caveat shall remain in force for six months from the date on which it is entered and shall then cease to have effect, without prejudice to the entry of a further caveat or caveats.
- (6) The Registrar of the Principal Registry shall maintain an index of caveats entered in all Registries and on receiving a notice of an application for a grant made in any Registry or to a Collector he shall cause the index to be searched and shall notify the appropriate Registrar or Collector in the event of a caveat having been entered against the sealing of a grant for which application has been made in the Registry or to the Collector.
- (7) The Registrar shall not make any grant if he has knowledge of an effective caveat in respect thereof:  
  
Provided that a caveat shall not operate to prevent the making of a grant on the day on which the caveat is filed.
- (8) A caveat may be warned by the issue from Registry of a warning in Form 165 at the instance of any person interested (which is referred to as "the person warning" in this rule)

which shall state his interest and, if he claims under a will, the date of the will, and shall require the caveator to give particulars of any contrary interest which he may have in the estate of the deceased; and every warning or a copy thereof shall be served on the caveator and the Registrar of the Principal Registry.

- (9) A caveator who has not entered an appearance in Form 166 to a warning may at any time withdraw his caveat by giving notice at the Registry and serving a copy of it on the Registrar of the Principal Registry and the caveat shall thereupon cease to have effect and, if he has been warned, the caveator shall give notice of withdrawal of the caveat to the person warning.
- (10) A caveator having an interest contrary to that of the person warning may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under paragraph (12), enter an appearance in Form 166 in the Registry, and shall serve on the person warning and the Registrar of the Principal Registry a copy of it sealed with the seal of the Court.
- (11) A caveator having no interest contrary to that of the person warning but wishing to show cause against the making of a grant to that person may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under paragraph (12), issue and serve a summons for directions, which shall be returnable before the Registrar.
- (12) If the time limited for appearance in Form 166 has expired and the caveator has not entered an appearance, the person warning may file in the Registry an affidavit showing that the warning was duly served and that he has not received a summons for

directions under paragraph (11), and thereupon the caveat shall cease to have effect.

(13) Except with the leave of the Registrar, no further caveat may be entered by or on behalf of any caveator whose caveat has ceased to have effect under paragraph (12) or rule 40.

(14) Upon an appearance being entered in answer to the warning of a caveat, the matter shall be deemed to be contested and the expenses of entry of such caveat and the warning thereof shall be considered as costs in the cause.

(15) In this rule, "grant" includes a grant by any Court outside Malaysia which is produced for resealing by the High Court.

**58.** At the pre-trial stage, Order 20 rule 9 of the Rules of Court 2012 was invoked. That relevant provision reads as follows:

Failure to amend after order (O. 20, r. 9)

9. Where the Court makes an order under this Order giving any party leave to amend a writ, pleading or other document, then, if that party does not amend the document in accordance with the order before the expiration of the period specified for that purpose in the order or, if no period is so specified, of a period of fourteen days after the order was made, the order shall cease to have effect, without prejudice, however, to the power of the Court to extend the period.

**59.** Equally pertinent is the provision pertaining to Expert Witnesses. It reads as follows:

Experts of Parties (O. 40A)

1.(1) The Court may, at or before the trial of any action, by order limit the number of expert witnesses who may be called at the trial to such number as it may specify.

- (2) A reference to an "expert" in this Order is a reference to an expert who has been instructed to give or prepare evidence for the purpose of Court proceedings.
- 2.(1) It is the duty of an expert to assist the Court on the matters within his expertise.
- (2) This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid.
- 3.(1) Unless the Court otherwise directs, expert evidence to be given at the trial of any action, is to be given in a written report signed by the expert and exhibited in an affidavit sworn to or affirmed by him testifying that the report exhibited is his and that he accepts full responsibility for the report.
- (2) An expert's report shall -
- (a) give details of the expert's qualifications;
  - (b) give details of any literature or other material which the expert witness has relied on in making the report;
  - (c) contain a statement setting out the issues which he has been asked to consider and the basis upon which the evidence was given;
  - (d) if applicable, state the name and qualifications of the person who carried out any test or experiment which the expert has used for the report and whether or not such test or experiment has been carried out under the expert's supervision;
  - (e) where there is a range of opinion on the matters dealt with in the report -
    - (i) summarise the range of opinion; and

- (ii) give reasons for his opinion;
  - (f) contain a summary of the conclusions reached;
  - (g) contain a statement of belief of correctness of the expert's opinion; and
  - (h) contain a statement that the expert understands that in giving his report, his overriding duty is to the Court and that he complies with that duty.
- 4.(1) A party may with the leave of the Court put to an expert instructed by another party written questions about his report.
- (2) An application for leave to put questions to an expert about his report shall be made within fourteen days of service of the expert's affidavit exhibiting his report, or such longer period as the Court may allow.
  - (3) The written questions under paragraph (1) shall be for the purpose only of clarification of the report.
  - (4) An expert's answers to the written questions put to him under paragraph (1) shall be in writing and provided within such time as the Court may direct and shall be treated as part of the expert's report.
  - (5) Where a party has put a question to an expert instructed by another party in accordance with this rule and the expert does not answer the question or does not, in the opinion of the Court, answer the question adequately within the time provided, the Court may make such order as it thinks just, including all or any of the following:
    - (a) that the party who instructed the expert may not rely on the evidence of that expert;

- (b) that the party who instructed the expert may not recover the costs of that expert from any other party; or
- (c) that the expert is to answer or provide a further and better answer to the question, as the case may be.

5.(1) The Court may, at any stage, direct a discussion between experts for the purpose of requiring them to -

- (a) identify the issues in the proceedings; and
- (b) where possible, reach agreement on an issue.

(2) The Court may specify the issues which the experts shall discuss.

(3) The Court may direct that following a discussion between the experts, they shall prepare a statement for the Court showing -

- (a) the issues on which they agree; and
- (b) the issues on which they disagree and a summary of their reasons for disagreeing.

(4) The contents of the discussions between the experts shall not be referred to at the trial unless the parties agree.

(5) Where the experts reach agreement on an issue during their discussions, the agreement shall not bind the parties, unless the parties expressly agree to be bound by the agreement.

60. One notable legislation is the Wills Act 1959. The apposite provisions of the Wills Act 1959 in the present action are sections 5 and 15.

Mode of execution

5.(1) No will shall be valid unless it is in writing and executed in manner hereinafter mentioned.

- (2) Every will shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction; such signature shall be made or acknowledged by the testator as the signature to his will in the presence of two or more witnesses present at the same time, and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary:

Provided that every will shall, as far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid under this section if the signature shall be so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will; and no such will shall be affected by the circumstance -

- (a) that the signature shall not follow or be immediately after the foot or end of the will;
- (b) that a blank space shall intervene between the concluding word of the will and the signature;
- (c) that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after, or under, or beside the names or one of the names of the subscribing witnesses;
- (d) that the signature shall be on a side or page or other portion of the paper or papers containing the will

whereon no clause or paragraph or disposing part of the will shall be written above the signature; or

- (e) that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature,

and the enumeration of the above circumstances shall not restrict the generality of this proviso; but no signature shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.

Effect of obliteration, interlineation or alteration

- 15. No obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration or at the foot or end of or opposite to a memorandum referring to such alteration and written at the end or some other part of the will.
  
- 61. The provisions of the Evidence Act 1950 that were cited by the parties include the following.

Facts necessary to explain or introduce relevant facts

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened or which show the relation of parties by whom any such fact was transacted, are relevant so far as they are necessary for that purpose.

Admissibility of documentary evidence in civil cases, etc.

73A. (1) Notwithstanding anything contained in this Chapter, in any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied:

- (a) if the maker of the statement either -
  - (i) had personal knowledge of the matters dealt with by the statement; or
  - (ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have had, personal knowledge of those matters; and
- (b) if the maker of the statement is called as a witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

- (2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence -
  - (a) notwithstanding that the maker of the statement is available but is not called as a witness; and
  - (b) notwithstanding that the original document is not produced, if, in lieu thereof, there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.
- (3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated, involving a dispute as to any fact which the statement might tend to establish.
- (4) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document, or the material part thereof, was written, made or

produced by him with his own hand, or was signed or initialled by him, or otherwise recognized by him in writing as one for the accuracy of which he is responsible.

- (5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of subsections (1) to (4), the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner, and, where the proceedings are with assessors, the court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason, it appears to it to be inexpedient in the interests of justice that the statement should be admitted.
- (6) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this Act, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and, in particular, to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.
- (7) For the purpose of any rule of law or practice requiring evidence to be corroborated, or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this Act shall not be treated as corroboration of evidence given by the maker of the statement.

### Burden of Proof

101. (1) Whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person

Court may presume existence of certain facts

114. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

...

- (g) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it;

...

62. The case law authorities cited and relied by the parties include:

On the Burden of Proof

*Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2004] 6 AMR 781; [2004] 4 CLJ 309; [2005] 2 MLJ 1; [2004] 2 MLRA 1 ("*Gan Yook Chin*"): The party propounding the will must prove due execution, testamentary capacity and dispel any suspicious circumstances, and once a prima facie case is established, the burden shifts to those challenging the will to prove undue influence, fraud or forgery;

*Chenna Gounder Kandasamy v Angamah Sunappan* [2016] AMEJ 1276; [2016] 7 CLJ 914; [2016]; [2017] 10 MLJ 387;

MLRHU 427: The Legal Principles on the Burden of Proof of Due Execution; and

Tho Yow Pew & Anor v Chua Kooi Hean [2002] 3 AMR 3703; [2002] 4 CLJ 90; [2002] 4 MLJ 97; [2002] 2 MLRA 213: The propounder must prove testamentary capacity and dispel any suspicious circumstances.

On Direct Evidence vs Expert Evidence

Lee Ing Chin @ Lee Teck Seng & Ors v Gan Yook Chin & Anor [2003] 2 AMR 357; [2003] 2 MLJ 97; [2003] 2 CLJ 19; [2003] 1 MLRA 95: When there is a direct and credible eyewitness account of the signing of a document, such evidence should generally be preferred over the opinion of a handwriting expert.

Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors [2004] 6 AMR 781; [2004] 4 CLJ 309; [2005] 2 MLJ 1; [2004] 2 MLRA 1: where there is credible, direct evidence from a witness who saw a document being signed, that evidence should be given greater weight than the opinion of a handwriting expert)

On the Requirements of Execution

Chenna Gounder a/l Kandasamy v Angamah a/p Sunappan [2016] AMEJ 1276; [2016] 7 CLJ 914; [2017] 10 MLJ 387; [2016] MLRHU 427: The Wills Act 1959 does not mention the requirement to have wills to be dated, although surely dating the same would be a very commonsensical and practical thing to do in order to determine if it is the last will of the testator. Failure to have it dated does not strictly invalidate the will, for other evidence may be adduced to establish date of execution, such as from the witnesses who must according to the Wills Act 1959 witness the signing by the testator;

*Sharp v Hutchings* [2015] EWHC 1240 (Ch) 13: A will prepared without a solicitor on a standard template is valid if the testator had knowledge, approval, and control over its execution;

*In Re The Will Of Cheah Seong Geok-Deceased* [1935] 1 MLJ 10; [1934] 1 MLRH 130: A "home-made", will though informally drafted, will be upheld if the testator's intentions can be ascertained and given effect as courts lean against intestacy;

*Karn Woon Lin & Anor v Cheah Chor Bok* [2013] 4 AMR 127; [2013] 4 CLJ 329 [2013] 3 MLJ 457; [2013] 4 MLRA 135: A will executed by thumbprint is valid if there is evidence that the testator intended and approved the will, and it was duly witnessed; and

*Teoh Ying Rin v Savatery Jayaraman* [2025] 3 AMR 40; [2025] 5 CLJ 92; [2025] 3 MLJ 920; [2025] 3 MLRA 132: The duty of attesting witnesses to a will is limited to witnessing and verifying that the testator signed the will, and their confirmation that this was done in their presence under section 5(2) of the Wills Act 1959.

#### On Alteration to Will

*In the Estate of Choo Kim Kiew, deceased: Chua Keng Geok and others v British Malaya Trustee & Executor Co Ltd* [1949] CLJU 24; [1949] 1 MLJ 144; [1949] 1 MLRH 354: Any alteration to a will made after its execution will be ineffective unless the alteration is properly attested; and

*In Re White: Barker v Gribble & Anor* (1990) 3 All ER 1: Any alteration made to a duly executed will after its execution will be ineffective unless the alteration itself complies with all the formal requirements for executing a will.

### On Suspicious Circumstances

*Tho Yow Pew & Anor v Chua Kooi Hean* [2002] 3 AMR 3703; [2002] 4 CLJ 90; [2002] 4 MLJ 97; [2002] 2 MLRA 213: Where there are suspicious circumstances surrounding the preparation or execution of a will, the propounder must affirmatively prove the testator's knowledge and approval in addition to proving testamentary capacity;

*Sharp and another v Adam and another* 10 ITELR 419: Will that totally excluded the testator's daughter was invalid given its irrationality in light of evidence that there was enduring mutual affection and no significant family rift;

*Edwards v Edwards* [2007] WTLR 1387: Fraudulent calumny: If someone poisons the testator's mind against a natural beneficiary with falsehoods, the will can be set aside;

*In re Key, deed; Key and another v Key and others* [2010] 1 WLR 2020 ("In re Key"): Bereavement and depression can impair testamentary decision-making, making a testator vulnerable to influence and requiring stronger proof of knowledge and approval of a will; and

*Dr Shanmuganathan v Periasamy Sithambaram Pillai* [1997] 3 AMR 3012; [1997] 2 CLJ 153; [1997] 3 MLJ 61; [1997] 1 MLRA 1: The court can conclude that a will is forged and invalid when strong expert evidence of forgery combines with suspicious circumstances surrounding how the will was prepared and discovered.

### On Undue Influence

*Khaw Cheng Poon & Ors v Khaw Cheng Bok & Ors and Another Appeal* [2005] 5 AMR 185; [2005] 6 MLJ 540; [2004] 2 MLRA 687: Unlike equity, undue influence in probate cannot

be presumed, it must be proved. Persuasion, advice, or appeals to affection do not amount to undue influence unless they destroy the testator's volition. The burden lies on the party alleging undue influence to show that the circumstances are inconsistent with any explanation other than coercion, and that such coercion directly affected the making of the will. Even without proof of undue influence, a court may still refuse to uphold a will if suspicious circumstances cast doubt on the righteousness of the transaction;

*Ch'ng Team Soo @ Cheng Chiu Seng & Ors v Khor Hok Kee & Ors* [2011] CLJU 1706; [2012] 10 MLJ 280: When a witness admits to discussing and aligning his evidence with another witness, it casts doubt on whether his testimony is genuinely his own. Consequently, such evidence must be treated with caution; and

*Schomberg and others v Taylor and others* [2013] EWHC 2269 (Ch): Persistent pressure on a vulnerable person can constitute undue influence.

#### On Chinese Custom and Inheritance

*In Re Tan Soh Sim, Deceased; Chan Lam Keo Ng and 4 Others v Tan Saw Keow and 3 Others* [1951] 1 MLJ 21; [1951] 1 MLRA 31: Under Chinese custom, the family, not the individual, is the unit of consideration. Upon marriage, a woman leaves her father's family and enters her husband's family permanently. Property and inheritance follow the male line, all sons inherit equally, daughters do not inherit, and there is no inheritance through a female. A wife's sister is regarded as outside the family.

#### On Evidence (Handwriting, Witnesses and Admissibility)

*Nisharn Sidhu-Brar v Randhir Singh* [2021] MLJU 639; [2021] AMEJ 0606: Under sections 67 and 45 47 of the Evidence Act 1950, a signature can be proved primarily by the direct evidence of a witness who saw the signing, which is sufficient even if the witness is not entirely independent. Other methods include admission, expert opinion, familiarity with handwriting, court comparison, or circumstantial evidence;

*Wan Zaizul Adli bin Wan Zulkifli v NTP World Corporation Sdn Bhd & Ors* [2022] CLJU 781; [2022] MLJU 792; [2022] MLRHU 695: The court will prefer the credible direct testimony of a disinterested witness who actually saw a document being signed over the opinion of handwriting experts (section 68 of the Evidence Act 1950);

*Premalla Navanthapany v Robert Ooi Hong Seang* [2021] AMEJ 0303; [2021] CLJU 399; [2021] MLJU 344; [2021] 6 MLRH 607: When faced with conflicting handwriting expert reports, the court will prefer the opinion that is more thorough, detailed, and consistent, even if certain tests (such as paper or ink analysis) are not conducted where those tests would not affect the key issue;

*Lee Ah Hoon v Lee Hock Teong* [2025] MLJU 586; [2025] MLRHU 426: Courts give more weight to expert handwriting evidence that points out clear signs of forgery, such as unnatural pen lifts and patched strokes, rather than evidence that only highlights similarities, and they favour detailed and focused forensic analysis;

*Cosco Shipping Heavy Industry (Dalian) Co Lrd & Anor v. Osta Fleet Sdn Bhd* [2024] AMEJ 2009; [2024] CLJU 1930; [2024] MLJU 2250; [2024] MLRHU 1592: Courts give significant weight to forensic document examiners' evidence where the analysis is thorough, consistent, and withstands

cross-examination. Identical positioning and duplication of signatures or stamps across documents indicate artificial creation (e.g., cut-and-paste) rather than genuine execution. Where credible forensic evidence shows a document was artificially created, it is inadmissible, and the burden shifts to the party relying on it to prove authenticity. Exact replication of signatures and stamps is statistically "almost impossible" naturally and strongly supports a finding of forgery;

*Amanah Raya Bhd (suing as administrator for the estate of Kantilal Prabhulal Doshi, deceased) v Jigarlal Kantilal Doshi & Ors and other suits* [2012] CLJU 1100; [2012] MLJU 781; [2013] 1 MLRH 47: Where questioned signatures are virtually superimposable and share identical deviations from genuine signatures, the court may conclude that they were forged using a model signature or tracing, as natural variation is absent;

*Chye Siew Foon v Tan Ah Tiang* [2023] AMEJ 2895; [2023] CLJU 2819; [2023] MLJU 3166: Claims for fraud, deceit, or breach of the Probate and Administration Act 1959 require proof of both liability and damage, and aggravated or exemplary damages will not be awarded without exceptional circumstances;

*Sinnaiyah & Sons Sdn Bhd v Damai Setia Sdn Bhd* [2015] 5 AMR 497; [2015] 5 MLJ 1; [2015] 7 CLJ 584; [2015] 5 MLRA 191: In civil claims, including those involving fraud, the standard of proof is on the balance of probabilities, and there is no higher or third standard despite the seriousness of the allegation;

*Letchumanan Chettiar Alagappan (As Executor to SL Alameloo Achi (Deceased)) & Anor v Secure Plantation Sdn Bhd* [2017] 3 AMR 625; [2017] 4 MLJ 697; [2017] 5 CLJ 418; [2017] 3 MLRA 501: A complaint of forgery in civil proceedings

amounts to a complaint of fraud and is proven on the balance of probabilities, following *Sinnaiyah*. It may be established with or without handwriting expert evidence, and the burden lies on the party asserting the genuineness of the document or transaction;

*Magendran Mohan v Public Prosecutor* [2011] 2 AMR 680; [2011] 1 CLJ 805; [2011] 6 MLJ 1; [2012] 5 MLRA 333: Interested witnesses' evidence must be treated cautiously but is not automatically rejected;

*Liow Siow Long v Public Prosecutor* [1969] CLJU 98; [1970] 1 MLJ 40; [1969] 1 MLRH 577: Evidence of close relations can be credible unless tainted by bias or partisanship;

*Ng Boo Bee v Khaw Joo Choe* [1916] 14 SSLR 90: Extrinsic evidence may be admitted to prove a document was executed on a different date than it states; and

*Seow Hoon Hin v Hartalega Holdings Bhd & Ors* [2019] AMEJ 0602; [2019] CLJU 779; [2019] 5 MLJ 421; [2020] 1 MLRA 616: An unsigned witness statement, even if filed and served has no evidential value until affirmed under oath and signed in court.

#### On Witness Credibility & Testimony

*Sri Paandi Restaurant Sdn Bhd & Anor v Saraswathy a/p Kesavan & Ors* [2019] AMEJ 0540; [2019] CLJU 754; [2019] 11 MLJ 421; [2019] 6 MLRH 232: Minor inconsistencies in an elderly witness's testimony do not undermine credibility when the evidence is detailed and corroborated by other witnesses; and *Takako Sakao v Ng Pek Yuen & Anor* [2010] 2 AMR 609; [2010] 1 CLJ 381, [2009] 6 MLJ 751; [2009] 3 MLRA 74: When a party chooses not to give evidence without providing

any reason, the court can draw an adverse inference against that party.

### **The Findings of this Court**

63. This Court has carefully and thoroughly examined the applicable legal principles governing testamentary instruments, alongside the contemporaneous documents and evidence presented.

#### *Everybody Loved Chew Yoong*

64. The parties tendered a collection of photographs, letters, postcards, and greeting cards in an effort to demonstrate their respective relationships with the Deceased. These materials were adduced to support their opposing assertions that the respective Wills they propound genuinely reflect the testamentary intentions of the Deceased at the material time.

65. This Court accepts that the love, respect, and affection for the Deceased were palpably evident in the testimonies of the witnesses. Both the Plaintiff and the Defendants advanced a common narrative: that Koh Chew Yoong harboured deep and abiding affection for his siblings (and his nephews and nieces) as well as for the First and Second Defendants.

66. To a certain extent, the photographs do reflect the warmth and familiarity shared between the Deceased and both sets of parties. They portray moments suggestive of a bond that was more than cordial with the First and Second Defendants, and equally evoke the enduring familial ties with the Koh siblings.

67. However, it is the considered view of this Court that such visual materials, while emotionally evocative, are of limited probative value. They do not, in and of themselves, suffice to establish or discredit the authenticity of either of the impugned Wills. Their

evidentiary weight falls short of tipping the scales in favour of one narrative over the other.

68. The same may be said of the letters, postcards, and greeting cards. Although some of these correspondences reflect instances of displeasure, indeed, even moments of apparent anger or estrangement, directed by the Deceased towards certain members of the Koh family, this Court is not persuaded that such expressions are, on their own, sufficiently probative to tip the balance in favour of either of the impugned Wills. In this Court's considered view, they fall short of exerting any decisive or conclusive influence over the question of testamentary intent.

*The Opposing Handwriting Experts' Reports*

69. The testimonies and written reports of the respective handwriting experts are of considerable evidential value and play a significant role in the context of the present dispute.
70. Both experts were subjected to extensive cross-examination by learned counsel for the respective parties, and their evidence was thoroughly tested.
71. However, upon careful evaluation, this Court finds that the opposing expert opinions effectively neutralise each other. The divergent conclusions reached by the experts, while meticulously reasoned, do not decisively assist this Court in determining the authenticity of the impugned 2019 Will. In the result, their evidential weight is rendered equivocal, and neither report conclusively tips the scale in favour of one version over the other.

*The Testimonies of the Witnesses*

72. This Court has addressed the testimonies and expert reports in the preceding paragraphs. At the risk of repetition, it must be observed that while the expert opinions are detailed, they ultimately neutralise

each other and do not decisively assist in resolving the core question of authenticity of the impugned 2019 Will.

73. Turning to the lay witnesses, the testimonies of PW3, PW4, and PW6 collectively support the view that the impugned 2019 Will is consistent with the Deceased's character, values, and longstanding familial relationships.
74. As the Plaintiff contended, the Deceased placed considerable importance on Chinese customs and traditions, particularly those concerning filial piety, family hierarchy, and the preservation of kinship bonds. The evidence indicates, to some extent, that the Deceased maintained a close and affectionate relationship with his siblings and their children, whom he regarded as his "godsons" and "goddaughters." PW3 recalled sustained correspondence between himself and the Deceased, particularly through written communication.
75. PW6, the Deceased's brother, gave a particularly poignant account, stating that, given their blood relationship, he could not comprehend why the entirety of the Deceased's estate would be left solely to the First and Second Defendants, excluding the Deceased's siblings.
76. The First Defendant, while seeking to demonstrate his own closeness with the Deceased, spoke of him in highly favourable terms, describing him as "a man with a heart of gold". Ironically, this very description lends weight to the Plaintiff's contention that such a person would have been more inclined to distribute his estate among all those dear to him, namely, his siblings, the First and Second Defendants, and even charitable institutions close to his heart, such as St. Thomas Church.
77. As for the Second Defendant, while she emphasised her advanced age in her testimony, this Court found her to be alert, articulate, and mentally sharp. However, during crossexamination, she was observed

to be evasive, particularly when confronted with correspondence between herself and her sister containing disparaging and unflattering references to members of the Koh family. These documents, authored by the Second Defendant herself, formed part of the Common Bundle of Documents. The irony is evident: the very documents that do not materially advance her defence or weaken the Plaintiff's case were self-authored and voluntarily disclosed. They also reveal a tendency towards acerbic commentary about the Koh family, a trait that, while perhaps of personal significance, does little to assist her case in these proceedings.

### *The Last Testamentary Will*

78. The duty of this Court is to given effect to the wishes of the Deceased, to do justice to the Deceased, as pleaded by PW6. In this respect, the question "boils down" to whether it is the impugned 2008 Will or the impugned 2019 that is the Deceased last testamentary will.

### *The Impugned 2008 Will*

79. The impugned 2008 Will was dated 27 June, 2008.
80. This impugned 2008 Will was signed by the Deceased and witnessed by Law Hui Wha (D1W3) from Messrs. Wong Law & Ti and Liom Lee Choo (D1W2), the legal clerk at Messrs. Wong Law & Ti, in the presence of one another.
81. This impugned 2008 Will, marked as Exhibit D1(1), reads as follows:

WILL

I, KOH CHEW YOONG (NRIC NO: 451049-10-5535 / 1215638) of  
A 5276, Lorong Tok Sira 9, 25050 Kuantan, Pahang Darul  
Makmur HEREBY REVOKE all former wills and testamentary

dispositions made by me and declare this to be my last will and testament.

1. I hereby appoint COLUM AIWAH MCNAMARA an IRISH citizen (Birth Certificate No; 1798) and residing at No.58, Jalan Ara SD 7/3D, Bandar Sri Damansara, 52200 Kuala Lumpur to be the executor and trustee of this my will.
2. I devise and bequeath all that piece undivided half (1/2) share of land held under HS(D) 88153 PT 25038 in the Mukim of Sungai Buluh, District of Petaling, State of Selangor together with 1 double storey terrace house erected thereon and known as No.58, Jalan Ara SD 7/3D, Bandar Sri Damansara, 52200 Kuala Lumpur to my executor as beneficiary absolutely.
3. Subject to payment of my debts, funeral and testamentary expenses I devise and bequeath all my real and personal property whatsoever and wheresoever not hereby specifically disposed off to LEE SUAN CHOO (NRIC NO; 390214-07-5347 / 1407883) absolutely.

IN WITNESS WHEREOF I have hereunto set my hand this 27th day of June, 2008.

Signed by the abovenamed )

KOH CHEW YOONG )

as his last will in the presence of us present) )

at the same time who at his request in his  
signed

presence and in the presence of each other) )

have hereunto subscribed our names as

witnesses:- )

signed

signed

.....

.....

LAW HUI WHA

LIOM LEE CHOO

[K/P: 500429-13-5225]

NRIC NO. A  
0837507

Peguambela &amp; Peguamcara Kuantan

- 82.** The Plaintiff has mounted a serious challenge to the validity and enforceability of the impugned 2008 Will.
- 83.** It was submitted that the impugned 2008 Will is invalid by reason of multiple suspicious circumstances surrounding its execution. These include the disproportionate benefit conferred upon the Defendants, its inconsistency with the Deceased’s known values and adherence to traditional Chinese customs, the questionable timing of its execution, and allegations of undue influence exerted by the Defendants. Additional concerns raised include the brevity of the Will, inconsistencies in the Second Defendant’s narration of events surrounding the Deceased’s death, and the Defendants’ conduct shortly thereafter. The Plaintiff further contended that, in any event, the impugned 2008 Will was superseded by the impugned 2019 Will, or alternatively, that the latter operates as a codicil to the former.
- 84.** In response, the First Defendant denied in the strongest terms that any suspicious circumstances attended the execution of the impugned 2008 Will, asserting that none existed.
- 85.** The First Defendant further submitted that the Plaintiff had not adduced credible evidence to demonstrate that the Deceased lacked the requisite testamentary capacity at the material time. It was argued that bodily ill-health, advancing age, or imperfect memory, without more, do not negate testamentary capacity. The proper

inquiry, it was contended, is whether the testator possessed a sound and disposing mind enabling him to comprehend the nature and effect of the testamentary act.

86. Upon careful consideration, this Court finds that there is no evidence, medical or otherwise, establishing that the Deceased was suffering from any mental disorder, insane delusion, or other infirmity affecting testamentary capacity at the time the impugned 2008 Will was executed.
87. On the suggestion that "bereavement may affect testamentary capacity" this Court agrees with the First Defendant that *In re Key* can be distinguished from the present case.
88. As in *Chiu Man Fu v Chiu Chung Kwan Ying* [2013] HKCU 1395, the Deceased's bereavement following the death of his wife was not of such severity as to impair his testamentary capacity. That case affirms the principle that, provided the requisite testamentary capacity exists, a testator is entitled to dispose of his estate in any manner he chooses, even if the disposition may appear, to an objective observer, to be unfair or unjust. As noted by the Hong Kong Court of Appeal:
- ... a testator may disinherit wholly or in part his children, and leave his property to strangers to gratify his spite, and the court must give effect to his will, even though the will may appear unfair and unjust to an objective and dispassionate observer, so long as the testator has the requisite testamentary capacity.*
89. Accordingly, the Plaintiff's reliance on the proposition that bereavement had impaired the Deceased's testamentary capacity is, in this Court's view, misplaced. The evidence does not establish that the Deceased's bereavement, following the death of his wife, was of such severity as to affect his ability to make a will.

90. It is trite that a testator is entitled, if he so chooses, to wholly or partially disinherit his relatives, and to dispose of his estate in a manner that may appear to others to be unfair or unjust, provided that he possesses the requisite testamentary capacity and complies with the formal requirements of the law.
91. In the present case, the Deceased's decision, in 2008, to leave his entire estate to the First and Second Defendants and to exclude his siblings is not, in itself, a basis to impugn the validity of the will. The motives or reasoning underlying such a disposition are immaterial so long as the legal requirements are satisfied.
92. This Court finds that the Plaintiff has failed to prove, on a balance of probabilities, that the Deceased lacked testamentary capacity on the date the impugned 2008 Will was executed.
93. The Second Defendant also gave evidence that the Deceased had executed two prior wills, both drafted by Messrs. Wong Law & Ti, namely, a will dated 17 August 2006 and a will dated 28 September 2006. Both prior wills, as well as the impugned 2008 Will, reflect the same testamentary intention, namely, that the Deceased had no intention of leaving his assets to his siblings.
94. The Plaintiff's arguments: that the Defendants were the sole beneficiaries to the exclusion of all blood relatives; that the terms of the impugned 2008 Will were "surprising and shocking" to the family; that there was no logical reason to bequeath a substantial part of the estate to the Second Defendant given her age and lack of issue; that the absence of provision for the Deceased's blood relatives was irrational and inconsistent with the conduct of a fair-minded person; and that there was no significant conflict between the Deceased and his siblings at the material time, do not, in this Court's assessment, displace the presumption of validity that attaches to a duly executed will.

95. The allegation of undue influence is, in this Court's view, wholly unsubstantiated and unsupported by credible evidence.
96. This Court therefore finds that the impugned 2008 Will complies with section 5 of the Wills Act 1959, was validly executed, and remains legally enforceable.

*The Impugned 2019 Will*

97. It remains to be determined if the validly executed impugned 2008 Will has been revoked or superseded by the Impugned 2019 Will.
98. It is not disputed that the impugned 2019 Will is a photocopy of a will purportedly executed on 9 March, 2019.
99. The "original" impugned 2019 Will and the "original copy" of the impugned 2019 Will are unknown.
100. The impugned 2019 Will reads as follows:

The Last Will and Testament of Koh Chew Yoong

1. I, Koh Chew Yoong [NRIC No. 451019-10-5535] of A 5276, Lorong Tok Sira 9, Kuantan, Pahang Darul Makmur hereby revoke all former wills and testamentary dispositions and declare this to be my last will ('My Will')
2. I appoint my eldest brother, Koh Ah Hwoi @ Koh Ah Hoi [NRIC No.: 391216-105137] of 63, Taman Seri Lengat, Jalan Reko,
3. Being a widower and childless, I give the following immovable properties:
  - a) my Property with an address at No. 11, Lorong Semambu Baru 84, Jalan Lebu Raya Semambu, Kuantan, Pahang Darul Makmur;

- b) my Property with an address at No, 9, Lorong Semamb Baru 84, Jalan Lebu Raya Semambu, Kuantan, Pahang Darul Makmur;
- c) my Property with an address at No. 65, Jalan 21/29, Sea Park, Seksyen 21, Petaling Jaya, Selangor Darul Ehsan;

to be shared equally between all my brothers and sisters, namely;

- i. Koh Ah Hwoi @ Kok Ah Hoi
  - ii. Koh Sew Ching @ Ah Ching
  - iii. Ko Siew Kim
  - iv. Koh Chaw Huah
  - v. Koh Siew Hong
  - vi. Koh Chew Ling @ Koh Chuw Ling
  - vii. Kok Chew Kien
  - viii. Koh Chew Lak
4. I give a life interest in my Property with and address at A 5276, Lorong Tok Sira 9, Kuantan, Pahang Darul Makmur to my sister-in-law, Lee Suan Choo [NRIC No.: 39021407-5347], who shall continue to live in this Property until her death and upon her death, I give this Property to the St. Thomas Church, Kuantan Pahang.
5. I give my Property with an address at A 5278, Lorong Tok Sira 9, Kuantan, Pahang Darul Makmur to the Little Sisters of the Poor, Home for the Aged in Cheras, Kuala Lumpur.

6. I give my ^ share in the Property with an address at No. 58, Jalan Ara SD 7/3D, Bandar Sri Damansara, Kuala Lumpur to Colum Aiwah Mcnamara (Irish National), who is the son of my wife's sister.
7. I give the balance standing in the following bank accounts and share trading account, to all my brothers and sisters as named in paragraph 3(i) to 3(viii) above, to be share equally between all of them;
  - a. Ambank Bhd Account No. 520030151458
  - b. RHB Bank Berhad Account No. 1-06012-00128736
  - c. Malayan Banking Berhad Account No. 106164063912
  - d. CIMB Bank Berhad Account No. 50-008-481720011
  - e. Malayan Banking Berhad Account No. 106164006446
  - f. HSBC Bank Account No. 362-193070-132
  - g. Public Bank Berhad Account No. 4-4963674-34
  - h. SGX Central Depository (Pte) Limited ("CDP") Account No.168120022533
  - i. CDS Account No 076-002-006892707 dealt through Alliance Investment Bank Berhad
8. I give all the contents of my safety deposit box at HSBC Bank Kuantan bearing No. 1065(c), to all my brothers and sisters as named in paragraph 3(i) to 3(vii) above, to be shared equally between all of them.

- 9. I give the following vehicles to all my brothers and sisters as named in paragraph 3(i) to 3(vii) above, to be shared equally between all of them:
  - i. Vehicle Registration No. CAG 3260;
  - ii. Vehicle Registration No. CCN 3260
  
- 10. I give the residue of my estate but subject to and after payment of or provision for my funeral and testamentary expenses, debts and any legacies given by this Will and any tax arising in respect of my death, to all my brothers and sisters as named in paragraph 3(i) to 3(vii) above, to be shared equally between all of them.

IN WITNESS whereof I have hereunto set my hand this 9<sup>th</sup> day of March 2019

This Will signed by the above )  
named

Koh Chew Yoong )

[NRIC No. 481019-10-5533] )

in the presence of us both at the )  
same

signed

time who at his request in his )  
presence

.....

and in the presence of each )  
other have

Koh Chew Yoong

hereunto subscribed our names )  
as witnesses

[NRIC No. 451019-105535]

signed

signed

.....  
Name: Lee See Leng

NRIC No.: 541120-10-5133

Address: No. 16, Jalan Indah 4  
Taman Indah, Sg. Jelok, Selangor  
43000 Kajang

.....  
Name: Poon Chem Kiang

NRIC No.: 601020-10-5891

Address: No. 337, Jalan 10,  
Taman Jasmin Kajang, 43000  
Kajang

101. The impugned 2019 Will was marked as an "ID" for identification purposes during the trial.
102. By any account, the impugned 2019 Will was, on its face, an exemplary testament. Fair, balanced, and reflective of what a fair-minded person might have expressed in his final disposition.
103. This Court accepts the Plaintiff's submission that the fact that the impugned 2019 Will was a "home-made" instrument and one that was not prepared by any firm of solicitors, including Messrs Wong, Law & Ti, does not render it invalid and unenforceable.
104. Be that as it may, and more significantly, serious and compelling questions as to the authenticity of the impugned 2019 Will have arisen in the course of these proceedings.
105. While the suspicious circumstances asserted by the Plaintiff in relation to the impugned 2008 Will have been rejected by this Court as unmeritorious, the suspicious circumstances surrounding the execution of the impugned 2019 Will are both stark and substantial.
106. First, the property listed in Item 3(c) of the impugned 2019 Will was never owned by the Deceased. Strikingly, this same property appears in the First Defendant's list of assets filed in support of his probate application. The First Defendant admitted that he had erroneously recorded the wrong address when providing instructions to his

solicitors for the probate application. This, in turn, reinforces the inference that the impugned 2019 Will was not prepared by the Deceased himself, but by someone who had copied the list of assets from the probate application.

107. Second, the bequest of the property listed in Item 4 to the Second Defendant raises further doubt. It is both illogical and legally impossible for the Deceased to purport to bequeath the entirety of a property in which he held only a two-thirds share to the Second Defendant, who already owned the remaining one-third share.
108. Third, Item 7(f) of the impugned 2019 Will, the HSBC Bank Account No. 362-193070-132, could not have appeared in any will executed on 9 March 2019. The evidence clearly established that this account, jointly held by the Deceased and the Second Defendant, was only opened on 29 October 2019.
109. This evidence came in the form of a letter from HSBC Bank dated 14 April 2023, confirming the account opening date, and was further corroborated by the testimony of Chan Sui Mei (DW2), Branch Manager of HSBC Bank, Kuantan Branch.
110. The same bank account number also appears in the First Defendant's probate application dated 9 December, 2020. This lends further weight to the allegation that the drafter of the impugned 2019 Will had replicated the list of assets from that probate application.
111. As noted in paragraph 34 above, the Plaintiff attempted to amend his Statement of Claim after the exchange of witness statements, after the commencement of trial, and after PW1 and PW2 had given evidence. This Court refused the application to amend.
112. The Plaintiff is bound by his pleadings. (See for example, *Narayannan Ponnusamy v Kannamah Ponnusamy* [1993] 4 CLJ 389; [1993] 2 MLRH 743 and *Lee Ah Chor v Southern Bank Bhd* [1991] 1 MLJ 428; [1990] 2 MLRA 6).

113. This Court also agrees with the Defendants that, pursuant to section 15 of the Wills Act 1959, alterations to a will cannot be made after its execution.
114. The Plaintiff contrasted the impugned 2008 Will with the impugned 2019 Will. The former designated only non-blood relatives as beneficiaries, whereas the latter purported to provide for the Deceased's siblings, the Defendants, his church, and other charitable bodies.
115. In the course of the trial, the Plaintiff suggested that the Deceased could, in the parlance of the Chinese community, be regarded as a "two-faced" person. It was posited that the Deceased may have led the Defendants to believe that he intended to leave his assets to them, while at the same time executing another will in favour of his siblings and certain charities.
116. In this Court's view, such a proposition is double-edged. If indeed the Deceased were "two-faced," then any impressions he may have conveyed to his blood relatives would have been equally unreliable. Acts such as expressing concern for his siblings' welfare, making occasional gifts to nephews and nieces, or maintaining respectful and cordial relations with the Plaintiff as his elder brother, do not, in and of themselves, constitute evidence of an intention to alter his testamentary dispositions in their favour.
117. In short, the Plaintiff's own characterisation of the Deceased as "two-faced" serves to underscore that outward civility or cordiality towards the Koh family cannot be equated with a genuine intention to bequeath any part of his estate to them.
118. This "unpleasant" dispute ultimately turns not on who among the living is more deserving, but on the simple and settled rule that a person is entitled to dispose of his estate as he sees fit. To the casual observer, a beneficiary may appear calculating or even undeserving;

yet the court is not in the business of rewriting a will to suit popular sentiment. A testator may be fair-minded, but his will need not conform to the fairness imagined by others. He may be a devout Catholic, yet entirely within his rights to leave not a single cent to the Church. Allegations, conjecture, and moral disapproval cannot supplant the testator's lawful freedom to choose.

119. Accordingly, and for the reasons already set out, this Court declares that the impugned 2008 Will is and shall remain the last valid testamentary instrument of Koh Chew Yoong, the Deceased.
120. This Court also makes the consequential order that the caveat entered in WA-KAVEAT-2701-12/2020 be set aside and that the original 2008 Will be returned to the First Defendant.

### **The Defendants' Counterclaims**

121. Having considered materials before this Court, this Court is in agreement that with the Plaintiff that the counterclaims are unmeritorious and are disallowed.
122. Such a finding is premised on the twin-ground that these counterclaims have been made against non-parties to the action and are not properly pleaded.

### **Costs**

123. This Court has directed the parties to submit on costs.
124. The Defendants relied on the cases of *Fiona Trust & Holding Corporate and Ors v Yuri Privalov and Ors* [2011] EWCH 664 (Comm) and *Takako Sakao (f) v Ng Pek Yuan (f) & Anor (No 2)* [2010] 2 MLJ 181 to support their contention that costs should be awarded on an indemnity basis.
125. The Plaintiff argued that such a contention is misplaced and referred this Court instead to Order 59 rule 16 of the Rules of Court 2012 and

cases such as *Alex Ting Kuang Kuo @ Ting Kuang Kuo v Credit Corp (M) Sdn Bhd* [2012] 9 CLJ 352; [2012] MLJU 1070; [2012] MLRHU 992, *Bank Pembangunan Malaysia Bhd v Sidqi Ahmad Said bin Ahmad & Ors* [2024] AMEJ 2813; [2024] CLJU 2812; [2024] MLJU 3336 and *Kualiti Alam Hijau (M) Sdn Bhd v HHC Industries Sdn Bhd & Ors* [2025] MLJU 1575; [2025] MLRHU 1115 .

- 126.** The Plaintiff further impressed upon this Court that he did not initiate this action unreasonably or improperly to warrant an order for indemnity costs and ought not to be penalised severely for his attempt to have his day in Court.
- 127.** Order 59 rule 16 of the Rules of Court 2012 provides as follows:

**Assessment of costs**

Basis of assessment (O. 59, r. 16)

- 16.** (1) In assessing the costs payable in relation to any item, the Court shall have regard to all relevant circumstances, and in particular to -
- (a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
  - (b) the skill, specialized knowledge and responsibility required of, and the time and labour expended by, the solicitor or counsel;
  - (c) the number and importance of the documents, however brief, prepared or perused;
  - (d) the place and circumstances in which the business involved is transacted;
  - (e) the importance of the cause or matter to the client;

- (f) where money or property is involved, its amount or value;
  - (g) any other fees and allowances payable to the solicitor or counsel in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.
- (2) Subject to the other provisions of these Rules, the amount of costs which any party are entitled to recover is the amount allowed after determination of costs on the standard basis where -
- (a) an order is made that the costs of one party to proceedings be paid by another party to those proceedings;
  - (b) an order is made for the payment of costs out of any fund;  
or
  - (c) no order for costs is required, unless it appears to the Court to be appropriate to order costs to be determined on the indemnity basis.
- (3) On an assessment of costs on the standard basis, there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the Court may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party; and in these Rules, the term "the standard basis", in relation to the determination of costs, shall be construed accordingly.
- (4) On a determination of costs on the indemnity basis, all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the Court may have as to whether the costs were

reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party; and in these Rules, the term "the indemnity basis", in relation to the determination of costs, shall be construed accordingly.

- (5) Where the Court makes an order for costs without indicating the basis of determination of costs or an order that costs be determined on any basis other than the standard basis or the indemnity basis, the costs shall be determined on the standard basis.
- (6) Notwithstanding paragraphs (2) to (4), if any action is brought in the High Court, which would have been within the jurisdiction of a Subordinate Court, the plaintiff shall not be entitled to any more costs than he would have been entitled to if the proceedings had been brought in a Subordinate Court, unless in any such action a Judge certifies that there was sufficient reason for bringing the action in the High Court.

**128.** Having considered the principles governing the award of costs, this Court orders the Plaintiff to pay the Defendants costs of RM250,000.00.

**Dated:** 18 AUGUST 2025

**(CHOONG YEOW CHOY)**

JUDGE

HIGH COURT OF MALAYA

SHAH ALAM, SELANGOR

**Counsel:**

*For the plaintiff - Watson Peters Paul Joseph Peters & Annesha Meera  
Jacob Samuel; M/s Peters Chambers*

*For the 1<sup>st</sup> defendant - Steven Wong Chin Fung, Ong Siew Wan, Nur Diana Ramlan, James Ng Kean Yip, Nurul Amira Ezzaty Nordin, Wan Elya Nadiah Wan Azizi; M/s Arifin & Partners*

*For the 2<sup>nd</sup> defendant - Sharen Rosli; M/s Ben Lee & Sharen*