

**DALAM MAHKAMAH TINGGI MALAYA SHAH ALAM  
DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA  
GUAMAN SIVIL NO. BA-22NCVC-210-06/2022**

**ANTARA**

**ARIF SAZALI BIN ABDULLAH**

**(NO. K/P: 740315-10-5557)**

**...PLAINTIF**

**DAN**

**1. WAKIL BAGI HARTA PUSAKA SI MATI SUKAR BIN MARKUM**

**(NO. K/P: 461012-10-5021)**

**2. MOHD NAZREE BIN KHALID**

**(NO. K/P: 800520-14-5787)**

**3. ZAINAB BIN OTHMAN**

**(NO. K/P: 570604-09-5026/5236795)**

**4. RAYA BAIDURI SDN BHD**

**(NO. SYARIKAT: 264379-P)**

**5. PENTADBIR TANAH DAERAH KUALA LANGAT**

**...DEFENDAN-DEFENDAN**



## **JUDGMENT**

### **Introduction**

[1] The case before this Court revolves around a dispute concerning a piece of land. Over the course of 25 years, ownership, rights, and beneficial interests in this property have changed hands through various means involving several parties, most notably, the Plaintiff and several of the Defendants. Also embroiled in the present conflict is the Land Administrator for the District of Kuala Langat.

[2] Allegations, including conspiracy by the First to Fourth Defendants, and error, negligence, and/or fraud by the Fifth Defendant, have necessitated this Court's responsibility to untangle the chain of events and ascertain the rightful party's rights and interests in this property, and to issue appropriate orders accordingly.

### **The Issues for Determination**

[3] The central issue at hand pertains to whether the power of attorney upon which the Plaintiff relies confers upon him the rights and/or interests in the property, thus entitling him to the reliefs sought from this Court.

[4] In addressing this principal matter, this Court is required to scrutinize the following subsidiary issues:

- (a) The validity and enforceability of the aforementioned power of attorney;



- (b) Whether the power of attorney grants indefeasibility of title and/or a registered interest to the Plaintiff, to the extent that it supersedes the rights of registered owners;
- (c) Whether the First to the Fourth Defendants conspired to defraud the Plaintiff;
- (d) Whether the Fifth Defendant committed an error, fraud and/or was negligent; and
- (e) Whether the Plaintiff's action is time-barred.

## **The Parties**

**[5]** The Plaintiff, Arif Sazali bin Abdullah, is a bankrupt, a fact repeatedly emphasized by all the Defendants in this action. Be that as it may, the Plaintiff was granted sanction by the Insolvency Department to initiate the present legal action against all the Defendants in this suit.

**[6]** The First Defendant, Wak bin Sukar, serves as the Administrator of the Estate of Sukar bin Markum, who passed away on May 11, 2020.

**[7]** The Second Defendant, Mohd Nazree bin Khalid, is one of the Administrators of the Estate of Khalid bin Zakaria. Khalid bin Zakaria passed away on October 4, 2005. The Second Defendant is the eldest son of the deceased Khalid bin Zakaria.



**[8]** The Third Defendant, Zainab binti Othman, is the other Administrator of the Estate of Khalid bin Zakaria. She is the widow of the deceased Khalid bin Zakaria.

**[9]** The Fourth Defendant, Raya Baiduri Sdn Bhd, is a private limited company and developer. It has been the registered owner of the property since 26 May, 2014.

**[10]** The Fifth Defendant is the District Land Administrator of Kuala Langat, a statutory body responsible for maintaining records of all ownership registrations and instruments.

### **The Key Facts and Events**

**[11]** The late Sukar bin Markum had been the owner of the property since 30 August, 1982.

**[12]** For purposes of the present suit, the first significant event occurred on 10 June, 1997 (“first event”). This was when the said property was transferred by Sukar bin Markum to Khalid bin Zakaria.

**[13]** The second momentous event took place on 5 July, 2000 (“second event”). This second event was the granting of a power of attorney by Khalid bin Zakaria to a company by the name of Ikhtiar Corporation Sdn Bhd (“ICSB”).

**[14]** This was followed by another event (“third event”) whereby ICSB transferred the said power of attorney to AASC Timber & Hardware Trading, a business wholly owned by the Plaintiff. This event happened



on 27 August, 2003. (This power of attorney was registered at the Shah Alam High Court in September, 2003 and at the Kuala Langat Land Office in April, 2006.)

**[15]** The next key event was when the Letters of Administration, dated 10 May 2006, were granted to the Second and Third Defendants (“fourth event”). This fourth event took place following the passing of Khalid bin Zakaria.

**[16]** The succeeding noteworthy event happened on 2 October, 2013, when the Second and Third Defendants filed an originating summons in the Shah Alam High Court under Suit No. 24-1390-10/2013 for the division of the late Khalid bi Zakaria’s estate (“sixth event”).

**[17]** Upon obtaining the Distribution Order dated 10 October, 2013 from the Shah Alam High Court, the property was re-transferred and re-registered to Sukar bin Markum (5/6 share) and to the Second Defendant (1/6 share) (“seventh event”). The reason behind the granting of this Distribution Order to retransfer the 5/6 share of the property to Sukar bin Markum will become clear in the ensuing paragraphs.

**[18]** Subsequent to all the above events, the Second Defendant sold his 1/6 share of land to the Fourth Defendant (eighth event”). This was made through a sale and purchase agreement dated 30 December 2013 and the 1/6 share was registered in the Fourth Defendant’s name on 26 May, 2014.

**[19]** Hence, on 26 May, 2014, the registered owners of the property were the Fourth Defendant (1/6 share) and the Sukar bin Markum (5/6 share).



**[20]** The Fourth Defendant then entered into a joint venture agreement with Sukar bin Markum on 8 January, 2014 for the development of the land (“ninth event”). This agreement included a power of attorney, which was registered under PT 27/2014 for the 5/6 share of the land. The power of attorney was also registered at the Seremban High Court on 22 January, 2014 and at the Land Office on 5 March, 2014.

**[21]** In 2015, the land was divided for development purposes pursuant to the joint venture agreement dated 8 January, 2014. The granting of planning permission was subject to certain conditions and payment of RM15,200.00, which was duly paid by the Fourth Defendant on 3 April, 2015. The property title was thereafter revoked and replaced with 30 temporary titles. Each of these titles was registered in the name of the Fourth Defendant (1/6 share) and Sukar bin Markum (5/6 share).

### **The Parties’ Contentions**

**[22]** The Plaintiff’s claim to the rights and/or interests in the property is premised on the power of attorney that it has been granted arising out of the second and third events. It is also the Plaintiff’s contention that the transfer of the said property to the Fourth Defendant is invalid as no consent had been obtained from the Plaintiff.

**[23]** The reliefs sought by the Plaintiff against the Defendants are for:

28.1. Satu deklarasi bahawa:



- (a) Plaintif mempunyai hak dan kepentingan ke atas tanah tersebut sebagai pemegang Surat Kuasa Wakil yang masih berkuatkuasa;

Terhadap Defendan Keempat (Raya Baiduri)

- (b) pindahmilik 1/6 bahagian tanah tersebut kepada Defendan Keempat adalah tidak sah kerana pindah milik berlaku tanpa kebenaran Plaintif selaku pemegang Surat Kuasa Wakil.

Terhadap Defendan Kelima (Pentadbir Tanah Klang)

- (c) Plaintif mempunyai hak dan kepentingan berdaftar ke atas tanah tersebut melalui instrumen Surat Kuasa Wakil bertarikh 22.09.2003 yang telah ditandatangani oleh Plaintif dan Arwah Khalid Bin Zakaria:
- (d) pemindahan 1/6 bahagian tanah tersebut daripada pentadbir Harta Pusaka Khalid, iaitu Defendan Kedua dan Ketiga kepada Defendan Ketiga (Mohd Nazree) adalah tidak sah kerana dilakukan tanpa kebenaran Plaintif;
- (e) pemindahan 5/6 bahagian tanah tersebut daripada Pentadbir Harta Pusaka Khalid, iaitu Defendan Kedua dan Ketiga kepada Defendan Pertama (Sukar) adalah tidak sah kerana dilakukan tanpa kebenaran Plaintif; dan
- (f) pemindahan hakmilik 1/6 bahagian tanah tersebut daripada Defendan Ketiga (Mohd Nazree) kepada Raya Baiduri melalui Perjanjian Jual Beli Tanah bertarikh 30.12.2013 adalah tidak sah kerana dilakukan tanpa kebenaran Plaintif.



28.2. Satu perintah bahawa:

- (a) Nama Sukar bin Markum dikeluarkan dan dipotong dari senarai nama pemilik 5/6 bahagian tanah tersebut;
- (b) Pindahmilik tanah tersebut daripada Defendan Kedua kepada Defendan Keempat melalui Perjanjian Jual Beli bertarikh 30.12.2013 dibatalkan dan dianggap tidak sah kerana dilakukan tanpa kebenaran Plaintiff;

28.3. Hakmilik-hakmilik yang disenaraikan dalam perenggan 20.1 hingga 20.30 dibatalkan;

- 20.1. HSM 14490 PT 13661, Mukim Telok Panglima, Daerah Kuala Langat, Negeri Selangor.
- 20.2. HSM 14491 PT 13662, Mukim Telok Panglima, Daerah Kuala Langat, Negeri Selangor.
- 20.3. HSM 14492 PT 13663, Mukim Telok Panglima, Daerah Kuala Langat, Negeri Selangor.
- 20.4. HSM 14493 PT 13664, Mukim Telok Panglima, Daerah Kuala Langat, Negeri Selangor.
- 20.5. HSM 14494 PT 13665, Mukim Telok Panglima, Daerah Kuala Langat, Negeri Selangor.
- 20.6. HSM 14495 PT 13666, Mukim Telok Panglima, Daerah Kuala Langat, Negeri Selangor.





- 20.7. HSM 14496 PT 13667, Mukim Telok Panglima, Daerah Kuala Langat, Negeri Selangor.
- 20.8. HSM 14497 PT 13668, Mukim Telok Panglima, Daerah Kuala Langat, Negeri Selangor.
- 20.9. HSM 14498 PT 13669, Mukim Telok Panglima Garang, Daerah Kuala Langat, Negeri Selangor.
- 20.10. HSM 14499 PT 13670, Mukim Telok Panglima Garang, Daerah Kuala Langat, Negeri Selangor.
- 20.11. HSM 14500 PT 13671, Mukim Telok Panglima Garang, Daerah Kuala Langat, Negeri Selangor.
- 20.12. HSM 14501 PT 13672, Mukim Telok Panglima Garang, Daerah Kuala Langat, Negeri Selangor.
- 20.13. HSM 14502 PT 13673, Mukim Telok Panglima Garang, Daerah Kuala Langat, Negeri Selangor.
- 20.14. HSM 14503 PT 13674, Mukim Telok Panglima Garang, Daerah Kuala Langat, Negeri Selangor.
- 20.15. HSM 14504 PT 13675, Mukim Telok Panglima Garang, Daerah Kuala Langat, Negeri Selangor.
- 20.16. HSM 14505 PT 13676, Mukim Telok Panglima Garang, Daerah Kuala Langat, Negeri Selangor.



- 20.17. HSM 14506 PT 13677, Mukim Telok Panglima Garang, Daerah Kuala Langat, Negeri Selangor.
- 20.18. HSM 14507 PT 13678, Mukim Telok Panglima Garang, Daerah Kuala Langat, Negeri Selangor.
- 20.19. HSM 14508 PT 13679, Mukim Telok Panglima Garang, Daerah Kuala Langat, Negeri Selangor.
- 20.20. HSM 14509 PT 13680, Mukim Telok Panglima Garang, Daerah Kuala Langat, Negeri Selangor.
- 20.21. HSM 14510 PT 13681, Mukim Telok Panglima Garang, Daerah Kuala Langat, Negeri Selangor.
- 20.22. HSM 14511 PT 13682, Mukim Telok Panglima Garang, Daerah Kuala Langat, Negeri Selangor.
- 20.23. HSM 14511 PT 13683, Mukim Telok Panglima Garang, Daerah Kuala Langat, Negeri Selangor.
- 20.24. HSM 14511 PT 13684, Mukim Telok Panglima Garang, Daerah Kuala Langat, Negeri Selangor.
- 20.25. HSM 14511 PT 13685, Mukim Telok Panglima Garang, Daerah Kuala Langat, Negeri Selangor.
- 20.26. HSM 14511 PT 13686, Mukim Telok Panglima Garang, Daerah Kuala Langat, Negeri Selangor.



- 20.27. HSM 14511 PT 13687, Mukim Telok Panglima Garang,  
Daerah Kuala Langat, Negeri Selangor.
- 20.28. HSM 14517 PT 13688, Mukim Telok Panglima Garang,  
Daerah Kuala Langat, Negeri Selangor.
- 20.29. HSM 14518 PT 13689, Mukim Telok Panglima Garang,  
Daerah Kuala Langat, Negeri Selangor.
- 20.30. HSM 14519 PT 13690 Mukim Telok Panglima Garang,  
Daerah Kuala Langat, Negeri Selangor.

Terhadap kesemua Defendan-Defendan

28.4. Gantirugi am terhadap Defendan-defendan;

28.5. Gantirugi teladan terhadap Defendan-defendan;

28.6. Kos; dan

28.7. Lain-lain relif yang difikirkan suaimanfaat oleh Mahkamah yang  
Mulia ini.

**[24]** The crux of the Second to the Fourth Defendants' assertions in their defence are that, first, the power of attorney granted to the Plaintiff is invalid and unenforceable; second, that the Fourth Defendant was a bona fide purchaser for valuable consideration of the said property; and third, the Plaintiff's action is time-barred pursuant to the Limitation Act 1953.



**[25]** According to the Fifth Defendant, the main issue relates to the power of attorney dated 22 September, 2003 which was registered on 13 April, 2006. That being the case, the Fifth Defendant cited and submitted at length on the provisions in the Powers of Attorney Act 1949 and the cases that deal with this aspect of the law.

**[26]** The gist of the Fifth Defendant's arguments is that first, the power of attorney had been revoked after the death of the donor; second, the power of attorney did not confer any proprietary rights to the donee; and third, there was no error, negligence and/or fraud on its part in keeping and updating records of the said Land Document of Title.

### **The Proceedings in this Court**

**[27]** The trial of this action took place over three consecutive days, on the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> of March, 2024.

**[28]** The Plaintiff called three witnesses. The witnesses were:

- (1) Masnawi bin Ariffin (PW1):
- (2) Arif Sazali Abdullah (PW2); and
- (3) Rosina binti Zakaria (PW3).

**[29]** Two witnesses testified on behalf of the Second, Third and Fourth Defendants. These two witnesses were:

- (1) Norizan binti Sukar (DW1); and



(2) Khairunnisa binti Asmoin (DW2).

[30] Farah Aini binti Hosni Hussen (DW3) and Norfarzilla Binti Hadib (DW4) testified on behalf of the Fifth Defendant.

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

[31] As the Plaintiff's claim is pivoted primarily on the power of attorney, the following provisions on the Powers of Attorney Act 1949 are pertinent.

[32] The first is the provision in Section 3, which provides as follows:

#### Authentication of powers of attorney

3. (1) No instrument purporting to create a power of attorney executed after the commencement of this Act shall have any validity to create such power within Peninsular Malaysia unless—

(a) if executed within Peninsular Malaysia, the instrument is executed before, and is authenticated in the appropriate form set out in the First Schedule hereto by--

- (i) a Magistrate;
- (ii) a Justice of the Peace;
- (iii) a Land Administrator;
- (iv) a Notary Public;
- (v) a Commissioner for Oaths;
- (vi) an advocate and solicitor; or
- (vii) an officer, acting in the course of his employment, of a company carrying on the



business of banking in Peninsular Malaysia and incorporated by or under any written law in force in Peninsular Malaysia; or

(b) if executed outside Peninsular Malaysia, the execution of such instrument is authenticated, in such form as may be accepted by the Registrar, by--

- (i) a Notary Public;
- (ii) a Commissioner for Oaths;
- (iii) any Judge;
- (iv) a Magistrate;
- (v) a British Consul or Vice-Consul;
- (vi) a representative of Her Britannic Majesty;
- (vii) on and after Merdeka Day, any Consular Officer of Malaysia;
- (viii) in the case of an instrument executed in the Kingdom of Saudi Arabia, the Malaysian Pilgrimage Commissioner; or
- (ix) in the case of an instrument executed in the Republic of Singapore, an advocate and solicitor of the Supreme Court of the Republic; or an officer, acting in the course of his employment, of a company carrying on the business of banking in the Republic and incorporated by or under any written law of the Republic.

(2) Notwithstanding anything to the contrary contained in any written law in force at the commencement of this Act, an instrument purporting to create a power of attorney duly executed and



authenticated in accordance with this section shall be deemed to be properly and validly executed and attested for all or any of the purposes for which a power of attorney may be used under any such written law.

**[33]** Next, section 4 of the Powers of Attorney Act 1949 provides that:

#### Deposit of power of attorney

4. (1) Except as hereinafter provided no instrument purporting to create a power of attorney shall, after the commencement of this Act, have any validity to create such power within \*Peninsular Malaysia until--
  - (a) a true copy of the said instrument duly compared therewith and marked by the Senior Assistant Registrar with the words "true copy"; or
  - (b) where the original instrument is deposited in the registry of the Supreme Court in Singapore, an office copy of such instrument, has been deposited in the office of a Senior Assistant Registrar.

#### Translation

- (2) If the instrument whereof a true copy or an office copy is so deposited is in any language other than the national language or English there shall also at the same time be deposited a translation into the national language or English thereof certified by an interpreter attached to the Court qualified to interpret in the language in which the instrument is written, or, if there be no such



interpreter, a translation into the national language or English verified by a statutory declaration of some person qualified to translate from the language in which the instrument is written into the national language or English to the effect that such translation is to the best of his knowledge and belief a true translation.

#### Fees

(3) There shall be payable in respect of the deposit of documents under this section such fees as may from time to time be prescribed.

#### Exception

(4) Subsection (1) shall not apply to instruments executed and used for the sole purpose of carrying out transactions in the office of a Registrar of Titles or a Land Administrator or a Chief Inspector or Senior Inspector of Mines, provided they are attested in accordance with any law for the time being in force regarding the attestation of such instruments.

**[34]** The revocation of a power of attorney can be traced to section 5 of the Powers of Attorney Act 1949.

#### Revocation

5. Every instrument purporting to create a power of attorney of which a true copy or an office copy has been deposited in the office of the Registrar or a senior Assistant Registrar in accordance with this Act or any law repealed by this Act whether before or after the commencement of this Act, shall, so far as the said instrument is valid and so far as may





be compatible with the terms of the instrument, continue in force until notice in writing of the revocation thereof by the donor, or of the renunciation thereof by the donee, has been deposited in every office in which the office copy or true copy thereof has been so deposited, or either the donor or the donee has died or the donee has become of unsound mind, or the donor has been adjudged to be of unsound mind or a receiving order has been made against him in bankruptcy.

**[35]** In the event that a power of attorney is given for valuable consideration, section 6 of the Powers of Attorney Act 1949 states that:

Powers of attorney given for valuable consideration

6. (1) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser--
  - (a) the power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, mental disorder, unsoundness of mind, or bankruptcy of the donor of the power; and
  - (b) any act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, mental disorder, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and



- (c) neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee of the power, or of the death, marriage, mental disorder, unsoundness of mind, or bankruptcy of the donor of the power.

(2) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act.

**[36]** The relevant decided cases pertaining to the above include *Tan Chong Keat Sdn Bhd v Pintar Pintas Sdn Bhd* [2005] 4 AMR 364; [2005] 2 CLJ 863; [2005] 4 MLJ 201; [2005] 1 MLRA 361, *Letchumanan Chettiar Alagappan @ L Allagappan (sebagai pelaksana wasiat/executor kepada SL Alameloo Achi alias Sona Lena Alameloo Acho, si mati) & Anor v Secure Plantation Sdn Bhd* [2017] 3 AMR 625; [2017] 5 CLJJ 418; [2017] 4 MLJ 697; [2017] 3 MLRA 501, *Tan Ah Lak & Co v Tan Ghee Seng @ Johnny Tan & Ors* [2021] AMEJ 1858; [2021] 1 LNS 2003; [2021] MLJU 2404; [2021] MLRHU 1938, *Tan Ah Kow & Anor v Tan Chau En* [2017] AMEJ 0839; [2018] 2 CLJ 610; [2017] 6 MLJ 297; [2017] 6 MLRA 141, *Hanizah binti Sulaiman lwn Abdul Kadir bin Sulaiman dan lain-lain* [2018] AMEJ 0416; [2018] CLJU 483; [2018] MLJU 467; [2018] 4 MLRH 585, *Ngadi Apandi v Mohamad Ali Md Ahsan & Ors* [2017] 3 AMR 83; [2016] 1 LNS 1743; [2016] MLJU 1548; [2016] MLRHU 1548, *Malaysia Building Society Bhd v Johore Mining and Stevedoring Company Sdn Bhd & Anor* [2004] 1 AMR 12; [2004] 5 CLJ 82; [2003] 4 MLRH 253 and *Liew Mok Poh & Anor v Balakrishnan Muthuthamby* [1990] 2 CLJ (Rep) 365; [1989] 2 MLRH 553.



**[37]** The relevant provisions of the National Land Code invoked by the Defendants are sections 89, 292 and 340(1). They read as follows:

Conclusiveness of register documents of title

89. Every register document of title duly registered under this Chapter shall, subject to the provisions of this Act, be conclusive evidence —

- (a) that title to the land described therein is vested in the person or body for the time being named therein as proprietor; and
- (b) of the conditions, restrictions in interest and other provisions subject to which the land is for the time being held by that person or body, so far as the same are required by any provision of this Act to be specified or referred to in that document.

Instruments capable of being registered, and method of presentation therefor

292. (1) The following instruments may be registered under this Part, and may be presented to the Registrar for that purpose in accordance with subsection (2):

- (a) any transfer under Part Fourteen of land, of an undivided share in land, or of any lease, sublease or charge;
- (b) any lease, sublease or surrender thereof under Part Fifteen;



- (c) any charge, discharge or instrument of postponement under Part Sixteen;
- (d) any certificate of sale under Part Sixteen; and
- (e) any instrument granting or releasing any easement under Part Seventeen.

(2) Any such instrument may be so presented either by lodging it at the Registry or, as the case may be, Land Office, or by despatching it to the Registrar by prepaid post; and the time of presentation shall, in the case of any instrument presented by post, be taken as the time at which it is withdrawn from its cover in the Registry or Land Office.

(3) The Registrar shall note the time of presentation on any such instrument forthwith.

(4) The death of any person by or on behalf of whom any instrument of dealing has been executed shall not affect the validity thereof, and any such instrument may, accordingly, be presented for registration under this Part as if the death had not occurred.

Registration to confer indefeasible title or interest, except in certain circumstances

340. (1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.



(2) The title or interest of any such person or body shall not be indefeasible —

- (a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or
- (b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or
- (c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

(3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in subsection (2) —

- (a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and
- (b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested: Provided that nothing in this subsection shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

(4) Nothing in this section shall prejudice or prevent —



- (a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or
- (b) the determination of any title or interest by operation of law.

**[38]** The cases relied by the Defendants include *Mansor Bin Shikh Ismail v Ban Hin Lee Bank & Anor* [1998] AMEJ 0096; [1998] 1 LNS 438; [1998] MLJU 126; [1998] 7 MLRH 131, *Pushpaleela a/p Selvarajah & Anor v Rajamani d/o Meyappa Chettiar and other appeals* [2019] 2 AMR 442; [2019] 3 CLJ 441; [2019] 2 MLJ 553; [2019] 2 MLRA 591 (“*Pushpaleela*”) and *Bayangan Sepadu Sdn Bhd v Jabatan Pengairan dan Saliran Negeri Selangor & Ors* [2022] 2 AMR 525; [2022] 2 CLJ 1; [2022] 1 MLJ 701; [2022] 2 MLRA 1 (“*Bayangan Sepadu*”).

### **The Decision of this Court**

**[39]** In view the fact that limitation operates as an absolute defence, this Court will first deal with this aspect of the law.

**[40]** The Second to the Fourth Defendants’ contention was that the Plaintiff is not claiming for recovery of land but instead is asserting his rights and/or interest in the land as the holder of a power of attorney. They then argued that the Plaintiff claim is therefore time-barred by virtue of section 6(1)(a) of the Limitation Act 1953 and the provision in section 9(1)



of the Limitation Act 1953 that applies for actions to recover land does not apply in this case.

**[41]** The Second to the Fourth Defendants did concede in their submissions as follows:

... However, Arif has also alleged fraud and/or conspiracy against the Defendants, in particular Raya Baiduri for acquiring a registered interest in the property.

They then went on to conclude as follows:

Thus, considering Arif's claim, the limitation period of 6 years would apply in this scenario.

**[42]** This Court is perplexed by the line of argument advanced by the Defendants.

**[43]** As for the Plaintiff, his response was simply: "The burden is for the Defendant(s) to proof".

**[44]** This Court is of the considered view that this is not a clear-cut case where section 6(1) of the Limitation Act 1953 applies. Hence, the answer to the issue as outlined in paragraph [4(e)] above is answered in the negative.

**[45]** Moving on to the issue of whether the Fifth Defendant had committed an error, fraud or had been negligent, in addition to the argument that there was no error, fraud nor negligence on its part in



keeping and updating records of the said Land Document of Title, the Fifth Defendant asserted that the Plaintiff has never pleaded this issue in their pleadings and this has only been raised in the “Isu-Isu Untuk Dibicarakan”.

[46] The decision of the Federal Court in *Samuel Naik Siang Ting v Public Bank Bhd* [2018] 3 AMR 259; [2015] 8 CLJ 944; [2015] 6 MLJ 1; [2015] 5 MLRA 665 is on point and this Court agrees with the Fifth Defendant. Furthermore, the evidence before this Court do not suggest that the answer to the question raised in paragraph [4(d)] should be in the affirmative.

[47] In relation to the issue of whether the First to the Fourth Defendant had conspired to defraud the Plaintiff, it is crucial to examine the seventh, eighth and ninth events.

[48] As noted, one of the main assertions by the First to the Fourth Defendants is that the Fourth Defendant was a bona fide purchaser for valuable consideration of the said property. The Defendants’ case is premised on the fact that as of 26 May, 2014, the Fourth Defendant has been the registered owner of the property. The reliance on sections 89 and 340(1) of the National Land Code by the Defendants is prima facie justified. On the authority of *PJTV Denson (M) Sdn Bhd & Ors v Roxy (M) Sdn Bhd* [1980] CLJU 55; [1980] 2 MLJ 136; [1980] 1 MLRA 562, the registration of the transfer of the said land, as a general rule, “defeats all prior unregistered interests in the land”. The question is, as underscored by the apex court, whether the Fourth Defendant in acquiring the registered title has been guilty of fraud.





**[49]** The evidence before this Court support the Defendants' contention that the Fourth Defendant was a bona fide purchaser without notice of any adverse claims. This conclusion is reinforced by the following fact that the Plaintiff had failed to lodged a caveat. The Defendants' contention is further supported by the following authorities namely: (1) *Pushpaleela*, where the principle enunciated by the Federal Court in that case is that "a third-party conducting an inquiry of the land need not go beyond the register to ensure that the land he or she is about to purchase is not fraught with encumbrances"; and *Bayangan Sepadu*, where the Federal Court expounded on the mirror and curtain principle.

**[50]** The law on conspiracy to defraud is also uncontroversial. The essential elements can be gleaned from cases such as *Trip4Asia Sdn Bhd & Anor v Destini Bhd* [2021] AMEJ 1499; [2021] CLJU 1483; [2021] 6 MLJ 820; [2022] 1 MLRA 264, *Global Ventures Network Sdn Bhd v Lokman bin Dato' Mohd Kamal and another appeal* [2017] AMEJ 1852; [2018] 7 CLJ 1; [2018] 6 MLJ 103; [2018] 2 MLRA 377: and *Renault SA v Inokom Corp Sdn Bhd & Anor and other appeals* [2010] 5 CLJ 32; [2010] 5 MLJ 394; [2008] 3 MLRA 504. There is insufficient evidence before this Court to support the allegation of conspiracy to defraud the Plaintiff. Hence, the answer as posed in paragraph [4(c)] is in the negative.

**[51]** The Plaintiff has anchored his claim on the power of attorney. This relates to the issues as outlined in paragraph [4(a) and 4(b)] and the law on this aspect of practice has been outlined in paragraphs [32] – [36] above.

**[52]** Upon an examination of the available documents and evidence, this Court finds that the Plaintiff has failed to establish that he has provided



valuable consideration to the donor when the power of attorney was created. The element of valuable consideration is mandated under section 6 of the Powers of Attorney Act 1949. In view of the conclusion reached by this Court, the power of attorney was deemed as having been revoked by virtue of section 5 of the Powers of Attorney Act 1949.

**[53]** One outstanding question relates to the true nature of consideration that was attached to the first event. The irksome issue relates to the nature of the consideration, whether the consideration was for love and affection, as indicated in the Memorandum of Transfer or was it for a consideration of RM360,000, in which case, the allegation that only RM60,000 or 1/6 of the consideration was paid by Khalid bin Zakaria.

**[54]** The argument advanced by the Plaintiff is that since the Memorandum of Transfer dated 10 June, 1997 between Sukar bin Markum and Khalid Zakaria proved that the transfer was based on love and affection the previous power of attorney given by Khalid bin Zakaria to ICSB survived pursuant to the Perjanjian Peralihan Kuasa and remains valid following the transfer from ICSB to AASC.

**[55]** However, as this Court has concluded that the power of attorney has been revoked and the allegation of conspiracy amongst the Defendants has not been proven, the issue of consideration surrounding the first event has no bearing on the outcome of this case.

**[56]** The Plaintiff's claims against each of the five Defendants are dismissed with costs.



**[57]** The Plaintiff to pay costs of RM10,000 each to the First, Fourth and Fifth Defendants and RM5,000 each to the Second and the Third Defendants, subject to allocatur.

Dated: 30 July, 2024

**sgd**

**[CHOONG YEOW CHOY]**

Judicial Commissioner

High Court of Malaya

Shah Alam

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(Messrs. Lope Maizura)

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(Messrs. Krishna Dallumah & Indran)

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(Pejabat Penasihat Undang-Undang Negeri Selangor)

