

A

**DALAM MAHKAMAH RAYUAN MALAYSIA  
BIDANGKUASA RAYUAN**

**RAYUAN SIVIL NO: C-01-23-2002**

**ANTARA**

**MANIAN @ K. BALASUBRAMANIAM A/L KANDASAMY  
... PERAYU**

**DAN**

B

- 1. PENTADBIR TANAH DAERAH RAUB ... RESPONDEN  
PERTAMA**
- 2. KANAMA A/P ADKON ... RESPONDEN  
KEDUA**

**(Dalam Mahkamah Tinggi Malaya di Temerloh  
Dalam Negeri Pahang Darul Makmur  
Saman Pemula No. 24-190-01**

C

**Dalam Perkara Aturan 7 Kaedah Kedah  
Kaedah Mahkamah Tinggi 1980  
Dan**

**Dalam Perkara Penserahan Kaveat  
Persendirian 150/2000 ke atas tanah  
yang di kenali sebagai GM 1889 No Lot  
2437, Mukim Gali, Daerah Raub, Negeri  
Pahang, Darul Makmur**

D

**Dan**

**Dalam Perkara 19C di dalam Seksyen  
326 (2) Kanun Tanah negara**

**Antara**

**Manian @ K. Balasubramaniam a/l Kandasamy ... Plaintiff  
(No. K/P: 470716-06-5253)**

**Dan**

E

- 1. Pentadbir Tanah Daerah Raub ... Defendan-**
- 2. Kanama A/P Adkon  
No. KP: 470716-06-5253 Defendan**

A                   **CORUM : ZALEHA ZAHARI, JCA  
KANG HWEE GEE, JCA  
AZHAR HJ MA'AH, JCA**

JUDGMENT OF THE COURT

This appeal is against the decision of the Temerloh High Court in allowing the 2<sup>nd</sup> Respondent's (the 2<sup>nd</sup> Defendant in the High Court) application to cancel a private caveat lodged by the Appellant against land known as GM 1889 Lot No. 2437, Mukim Gali, District of Raub, State of Pahang, Darul Makmur "the said land", of which the 2<sup>nd</sup> Respondent is the registered owner) which caveat was filed when the disposal of an Originating Summons to extend an earlier private caveat lodged by him in respect of the same land on the same grounds was then pending.

The learned Judicial Commissioner (as he then was) had, on 21.1.2002, allowed the 2<sup>nd</sup> Respondent's application and ordered that private caveat No. 510/2001 registered on 14.8.2001 lodged by the Appellant against the said land be cancelled. The Judicial Commissioner then dismissed with costs the Appellant's Originating Summons to extend private caveat No. 150/2001 lodged on 23.4.2001 against the said land. He further directed that damages be assessed by the Senior Assistant Registrar arising from the entry of the caveat.

E   Background

The background facts are as follows. The said land was

A previously registered in the name of the 2<sup>nd</sup> Respondent's late husband, Pakiry s/o Katan (Deceased), (Pakiry) who died on 3.5.1950.

On 22.3.1982 the Appellant registered a private caveat against the said land vide Presentation No: 64/1982 Vol. 3 B Folio. 39 ("the 1st caveat") on the ground that he had purchased the said land from Pakiry/2<sup>nd</sup> Respondent's son, Gopalakrishnan s/o Pakiry (Gopal), at a purchase price of RM15,500.00.

The Appellant produced two receipts, one dated C 29.12.1980 and the second dated 11.5.1981, for the sum of RM500.00 and RM1,100.00 respectively as proof of the said purchase. At the time of said purchase the said land was still registered in Pakiry's name as the Letters of Administration of Pakiry's Estate had not as at that date been extracted.

D In 1983 the 2<sup>nd</sup> Respondent applied for the said land to be transferred to her as beneficiary of Pakiry's estate under the Small Estates (Distribution) Ordinance 1955. Her two sons, Gopal and Nadarajah s/o Pakiry, renounced their rights in Pakiry's Estate in the 2<sup>nd</sup> Respondent's favour. On 20.4.1983 the Land Administrator made an order that the assets under Pakiry's Estate, E including the said land, be transferred to the 2<sup>nd</sup> Respondent. Be that as it may, Form E under the Small Estate (Distribution)

A Ordinance 1955 was only issued on 10.4.2001.

The Appellant lodged another private caveat against the said land vide Presentation No. 180/1988 Vol. 7 Folio. 59 (“the 2<sup>nd</sup> private caveat”) on 22.3.1988 on the same grounds upon expiry of his 1<sup>st</sup> private caveat. Six years later, on 23.3.1994, the Appellant  
B lodged another private caveat vide Presentation No: 119/1994 Vol. 14 Fol. 8 (“the 3<sup>rd</sup> private caveat”) on the same land on the same grounds upon the expiration of the 2<sup>nd</sup> private caveat. Six years thereafter, on 23.4.2001, upon expiration of the 3<sup>rd</sup> private caveat, another private caveat was lodged by the Appellant vide Presentation No: 150/2001 (“the 4<sup>th</sup> private caveat”) on the same  
C grounds on the same land.

On 30.4.2001(subsequent to the issuance of Form E of the Small Estate (Distribution) Ordinance 1955) the said land was transferred into the 2<sup>nd</sup> Respondent’s name. When the 2<sup>nd</sup>  
D Respondent submitted the transfer form of the said land to be registered into her name, the 2<sup>nd</sup> Respondent also applied for the Appellant’s 4<sup>th</sup> private caveat (i.e. No. 150/2001 lodged on 23.4.2001) against the said land be removed. The 2<sup>nd</sup> Respondent averred to not having any knowledge of the alleged transaction between Gopal and the Appellant. She averred that  
E such a transaction was not valid as Gopal was not the owner of the said land and accordingly had no right to sell the said land to the Appellant. The 2<sup>nd</sup> Respondent averred that she had never

A consented to such a transaction.

The application to remove Appellant’s 4<sup>th</sup> private caveat under section 326(1) of National Land Code (the Code) was made by using a Form then numbered as “Form 9” which reads as follows-

B “ Form 9  
(Section 326)

**APPLICATION FOR REMOVAL OF PRIVATE CAVEAT**

To the \*Registrar/Land Administrator

.....

I .....

of .....

C being the \*proprietor/lessee/sub-lessee/charge

.....

whose \*land/interest is bound by Private Caveat volume

No .....Folio No .....which is

Entered by .....

On the .....day of ..... 19 ..... hereby

Apply for the removal of the said caveat under section 326 of

D the National Code.

2. As required, I submit herewith the prescribed fee of \$

.....

Dated this ..... day of ..... 19 .....

.....

Signature of applicant

[Attestation Clause]

E SCHEDULE OF \*LAND/INTEREST

(as in Form 13A) ”

A        The Land Administrator Raub then issued to the Appellant, as caveator, the requisite “Notice of Intention of Removal of Caveat” dated 16.5.2001 as provided in section 326 in terms of Form 19C of the Code. Form 19C was served on the Appellant, pursuant to section 326(1A)(a) of the Code on 23.4.2001. The Appellant was required to furnish a Court Order  
B to the Land Administrator within a period of 60 days (i.e on or before the 16.7.2001) failing which the Appellant’s 4th private caveat would be cancelled.

Three days before the period to furnish such an Order was scheduled to expire, the Appellant had, on 13.7.2001 filed  
C Temerloh Originating Summons No. 24-190-2001 for an Order to extend his 4th private caveat.

By reason of the Appellant’s failure to furnish a Court order to the Land Administrator before the expiry of the period of sixty days specified in the notice, on 21.7.2001 the  
D Appellant’s 4<sup>th</sup> private caveat was cancelled by the Land Administrator. Subsequent to the cancellation of his 4<sup>th</sup> private caveat, and pending the disposal of the Originating Summons to extend his 4<sup>th</sup> private caveat, the Appellant then on 14.8.2001, vide Presentation No. 510/2001, registered another private caveat (“the 5<sup>th</sup> private caveat”) against the said land on  
E the same grounds as that of the 4<sup>th</sup> private caveat which had been cancelled by the Land Administrator.

A           The 2<sup>nd</sup> Respondent then on 28.9.2001 filed a  
Summons-in-Chambers in the Originating Summons filed by the  
Appellant to extend his 4<sup>th</sup> private caveat, for an order that the  
Appellants 5th private caveat be set aside. As earlier stated in  
this Judgment, the 2<sup>nd</sup> Respondent's application was allowed,  
and the Appellant's application to extend his 4<sup>th</sup> private caveat  
B was dismissed by the Judicial Commissioner.

          Under section 323 (1)(a) of the Code, apart from  
satisfying the Court as that he has a caveatable interest and the  
existence of a triable issue, a caveator must also go on to satisfy  
the Court that on a balance of convenience it would be better to  
C maintain it pending the disposal of the action.

          The popular meaning attributed to the word "extend" in  
section 326 (2) of the Code is that it enlarges or gives further  
duration to any existing right rather than re-vests an expired right.  
We are in agreement with the Judicial Commissioner that the  
D Court's power to extend a caveat under section 326(2) of the  
Code was only exercisable where a caveat is still "alive" and was  
no longer exercisable after a caveat had been cancelled.

          On the facts of this case the Land Administrator had  
clearly acted within the powers conferred upon him by section  
E 326(1B) of the Code in removing the Appellant's 4<sup>th</sup> private caveat  
for failure to furnish a Court order within the time specified. The

A Judicial Commissioner was right in ruling that once a private caveat has been removed, the Code does not give the Court power to revive, renew/continue a private caveat which has cancelled. It is not within the inherent jurisdiction of the Court to make orders which go beyond the limit of the powers expressly given to it by statute.

B

Once the Appellant's 4<sup>th</sup> private caveat was removed this triggered the operation of section 329 (2) of the Code. According to this provision the Appellant is precluded from entering a private caveat against the said land on the same grounds as the 4<sup>th</sup> private caveat which had been cancelled. The entry of the 5<sup>th</sup>

C caveat by the Appellant was clearly in breach of section 329 (2) of the Code.

On the issue of the 2<sup>nd</sup> Respondent's usage of an incorrect form in applying for the removal of the Appellant's 4<sup>th</sup> private caveat, we are in agreement with the submission of Dato'

D Ramachelvam who was acting as *amicus curie* for the 2<sup>nd</sup> Respondent, that nothing turns on this point. The amendments made by National Land Code (Amendment) Act 1992 (A 832/1992 re-numbered the existing "Form 9" (Application For Removal of Private Caveat) as "Form 19H". We note that the contents of the re-numbered "Form 19H" and that numbered as E "Form 9" prior to the amendment, are exactly the same.

A

**“ [Form 19H]**

(Section 326)

**APPLICATION FOR REMOVAL OF PRIVATE CAVEAT**

Here To the \*Registrar/Land Administrator .....

Enter the name of I ..... of

the State ..... of

of District being the \*proprietor/lessee/sub-lessee/charge .....

as whose \*land/interest is bound by Private Caveat Volume No

appropriate ..... Folio No ..... which is entered by

.....on the

..... day of .....19 ..... hereby

apply for the removal of the said caveat under section 326 of

the National Land Code.

B

2. As required, I submit herewith the prescribed fee of RM.....

Dated this ..... Day of ..... 19 .....

.....

Signature

C

[Attestation Clause]  
 SCHEDULE OF \*LAND/INTEREST  
 (as in Form 13A)]

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\*Delete as appropriate ”

D

Clearly, the use of the Form numbered as “Form 9” instead of the re-numbered “Form 19H” of the Code has no substantial effect and the Appellant has not been misled by the use of such a Form.

E

On the other issues raised as to the merits of the Appellant’s claim on the alleged purchase of the said land, and the issue of limitation raised by the 2<sup>nd</sup> Respondent, these were considered to be as irrelevant by the Judicial Commissioner

A which need not be considered at that stage.

We are of the view that the Judicial Commissioner should have considered the issue whether the alleged transaction between Gopal and the Appellant confers upon the Appellant a caveatable interest. In *Chong Phaik Har v. Farlim Properties Sdn*  
B *Bhd.* (1997) 3 MLJ 188 the Federal Court held that a beneficiary under an intestacy has no interest or property in the personal estate of a deceased person until the administration of a deceased estate is complete and distribution made according to the law of distribution of estate. As the alleged transaction with Gopal who was then but a beneficiary in Pakiry's estate, the  
C administration and distribution was then incomplete. The alleged transaction with Gopal was accordingly invalid and of no legal effect.

For the abovementioned reasons the Appellant's appeal was dismissed with costs. In the exercise of our discretion we  
D made no order as to costs. The deposit to the Appellant.

sgd

ZALEHA ZAHARI  
Judge  
Court of Appeal  
Malaysia

E  
Dated : 22.6.2009

A Note:

The Appellant ... In Person  
No. 231, Jalan Lipis,  
27600 Raub  
Pahang Darul Makmur

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For the 1<sup>st</sup> Respondent ... En Kamal Azira Hassan  
Penolong Penasihat Undang-  
Undang  
Pejabat Penasihat Undang-  
Undang Negeri Pahang  
Tingkat 3, Wisma Sri Pahang  
25512 Kuantan  
Pahang Darul Makmur

C

For the 2<sup>nd</sup> Respondent ... Dato' M Ramachelvam  
( Amicus Curie) ... Tetuan Rama-Rozi & Associates  
Peguambela & Peguamcara  
No. 33, Tingkat Satu, Jalan Dato'  
Bahaman 3  
28000 Temerloh  
Pahang Darul Makmur

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