

**IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF
SINGAPORE
[2025] SGFC 129**

OAM 246/2025

HCF/DCA 137/2025

In the Matter of Section 23(1)(k) of the Mental Capacity Act 2008

And

In re P

a person alleged to lack capacity

XVT

... Applicant

GROUNDINGS OF DECISION

[Family Law – Mental Capacity Act – Statutory Wills]

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In re P

[2025] SGFC 129

Family Justice Courts — FC/OAM 246/2025

District Judge Shobha Nair

12 August, 16 September, 4 November 2025

4 December 2025

District Judge Shobha Nair

Introduction

1. The Mental Capacity Act 2008 (2020 Rev. Ed.) (MCA) provides a legal framework for wide-ranging issues relating broadly to how individuals can protect their interests should they lose mental capacity or how individuals who have lost capacity, may continue to be protected and cared for by others. S 23(1)(k) of the MCA enables a court to direct the execution of a will on behalf of a person who has lost capacity (P) if this advances his best interests¹ as defined under s 6 of the Act. The

S 3(5) of the MCA

present application was for such a “statutory will” to be executed. The position that Parliament made clear when enacting the provision was for this power to be exercised very carefully and stringently.²

2. The present application was not contested. Having heard from the applicant’s counsel, I dismissed it and provide my reasons for the same.

Facts

3. The applicant is the deputy for his brother, P, an appointment made by me pursuant to his application in FC/OSM 465/2021. They have 4 other siblings. P lived with his late mother in her 3-room Housing and Development Board (HDB) flat prior to their late mother’s passing. Upon her passing and in accordance with her will, this flat was given to one of her other sons, who I shall refer to as John.
4. According to the applicant, John wanted P to stay on at the flat after their mother’s passing and decided to transfer his title and rights to P. The applicant by way of the present application is seeking that a statutory will be executed on behalf of P to allow John to be the sole beneficiary of the flat when P passes away.

² Parliamentary Debates, Official Report dated 15/9/2008, Vol 85, Col 151

Reasons for the dismissal of the application

P's best interests are not served by a "statutory will"

5. All the siblings save for one, had consented to the application. The applicant was of the view that the best interests of P would be served by the execution of the statutory will. Counsel for the applicant referred to the court's decision in *BHR and Anor. v BHS*³ which, drawing on positions expressed by English Courts interpreting similar provisions, spoke of how best interests can be served even after one's passing in the way one is remembered with affection and for having done the right thing by their will. Given that John had given up his right to the property willed to him by his late mother, the applicant was of the view that the right thing would be for P to "return" the property to John when P passes away. In the case of *BHR*, P had made a will in 1996 which benefitted her 6 children equally. In 2010, a new will was allegedly executed. The defendant in that case had possession of the will but did not produce it, conveying to the other siblings however, that it was largely of benefit to the defendant. The Court executed a statutory will for P which was substantially in line with the 1996 will in that it provided for the 6 siblings and the issue of a deceased child, equally. The Court stated that

³ [2013] SGDC 149

“while *P*’s best interersts would be served by giving effect to *P*’s wishes, best interests do not cease at the moment of death”.⁴ I did not disagree with this. There are other situations where the court might also step in. Clearly where a will was executed that would lead to unjust outcomes or where there are changes in circumstances which make certain provisions in an existing will challenging to execute, the court may intervene. In *TCZ v TDA, TDB and TDC*⁵ a statutory will was directed to be executed for an 88 year old lady who had dementia, on findings of undue pressure by a male caregiver that influenced her into executing a will which provided much of her wealth to him. The statutory will mirrored a will that the lady had executed previously when she was in better health and which left most of her wealth to charity.

6. In the case before me, no will was ever executed by *P*. It is a situation where *P* played no part in any exercise involving the HDB flat. To hinge the application on the best interests of *P* would not be correct. This appears to be a case where the best interests of the family are being advanced. That is not the design behind s 23((1)(k).

⁴ Paragraph 56 of the Judgment

⁵ [2015] SGFC 63

Reason(s) for having transferred the property to P

7. I had asked the applicant's counsel what the reason for the initial transfer of the property was. I asked if John had other property. Counsel answered in the affirmative but was not able to speak more on this.⁶ FC/OSM 465/2021 which was a matter before me and the supporting affidavit filed in that matter reveals that the applicant had informed the court then that John had paid for the flat to allow his mother and P to stay. When their mother passed away, everyone, save for one brother, felt it is best to let P stay on at the property given that no one could take him in to live with them. John could not keep the flat in his name as he had a HDB property of his own.⁷ Given that the family did not want to disrupt P's living arrangement, it appears that John decided to transfer his rights. While I agree that it would be in the best interests of P to keep his living arrangements comfortable, familiar and stable, if possible, the law cannot endorse a position where family members decide what to do at a given point in time to ostensibly advance the interests of P but in effect, preserve their own. It was their late mother's wish for the property to go to John. She must have had her reasons

⁶ NE of 4/11/2025 at Page 8B

⁷ Paragraph 11 (a) (ii) of affidavit of 10/12/2021

which I assume to be her belief that John cares and will provide for P. Had she known that John could not hold on to the property in his name, it is not known how she would have dealt with the property given her obvious and understandable concerns about P's care after her death. However, what we do know is that no one could take P in after their mother's passing. The family did not want to sell the property and John could not hold on to title to 2 HDB flats. The family did not in 2021 believe that the property ought to continue in P's name although the representation to the court in 2021 was to that effect.

Legitimate ways to achieve the same result without compromising the interests of other family members

8. The flat could still go to John if that is what the siblings desire. If P predeceases all his siblings, his estate would be distributed in accordance with the laws of intestacy. Given that P's parents have passed on, he is not married and does not have children, the estate would be divided amongst the very siblings who have come forward for this matter. They are entitled to give their shares up to John if they so wish.
9. There is one sibling who had in the first application in FC/OSM 465/2021 remained silent to the applicant's request to be appointed as a deputy for P. The reason given by the applicant at that time was that

this sibling was abroad and could not get to a Notary to provide written consent on account of the challenging COVID-19 lockdown restrictions in China.⁸ He has however chosen to remain silent for this matter too. The applicant had in written submissions to court indicated that he was willing to have 20% of the estate given to the brother who has remained and that the statutory will need only address the 80% share that would belong to the remaining siblings collectively if the laws of intestacy govern the distribution of P's estate.⁹ I found this to be an odd position and one that was perhaps addressing the court's concern that not all the siblings were in agreement. There is nothing stopping the siblings from giving up their shares if they wish to ensure that John ultimately benefits.

10. The position of John's family was not sought when he chose to transfer his rights to P. Now that it is in P's name, the entitlements of the families of John and the other siblings may need to be considered.

11. A court should not have to enable a family to navigate through legal challenges unless what is being sought is clearly in the best interests of

⁸ Page 7 of the supporting affidavit filed in FC/OSM 465/2021

⁹ Paragraph 21 of the submissions dated 24/10/2025

P. The intention of the mother was different from the intention of the children. They are concerned for P but at the same time, they want a result that appears to honour their mother's initial wishes. The purpose of a statutory will is to advance the interests of P and there is little in evidence to show this. Counsel suggested in submissions that the siblings may want to prevent a position where their individual families may raise objections if the siblings attempted to give up their rights to John when P passes.¹⁰ There are ways to address such difficulties but it cannot be through an application which does not meet the best interests of P. The siblings may also want to consider executing their own wills which spell out their intentions in different factual scenarios to ensure that their shares benefit John or his estate. I will leave that discussion to be had between counsel and his client.

Conclusion

12. Granting this application even if uncontested, would be to set bad precedent. The makers of the law call for the courts to be slow in directing statutory wills. In all past cases, there was typically the existence of a will which expressed the autonomy of an individual but

¹⁰ NE of 4/11/2025 at page 8D

could not be carried out or one that was revoked by a later will that was discordant with past expressed intentions of an individual.

13. When the applicant sought to be a deputy for P, he asked that he act for P to enable the transfer of John's rights in the flat to P. This was enabled on the reasons given in that application which included that John could not retain the HDB flat in his name. It appears that there was no intention to retain P's name as evidenced by the present application which seeks to undo the position at a time P passes away. However, on account of the lack of consent of one brother, the potential silencing of other members of the siblings' families should intestacy laws no longer govern the distribution of P's estate when P passes away and most importantly that this statutory will does not advance P's interests in any way, the application was not allowed.

14. The siblings are able to provide John with what they think should rightfully belong to John. If the applicant and other siblings wish to address concerns relating to how their families would react should they provide their entitlements to John at the time of P's passing, there are other ways to manage that. It is not in my view, through a peremptory application under s 23(1)(k) of the MCA.

In re P, application by XVT

[2025] SGFC 129

Shobha Nair
District Judge

Andrew Wong Wei Kiat (I.R.B. Law LLP)
for the applicant
