



MahWengKwai & Associates

ADVOCATES AND SOLICITORS



Speaker
JOSEPH KHOR
Senior Associate



Speaker
**KEERTHANA
AISWWARYA**
Associate



Moderator
RAY CHEN
Pupil In Chambers

Wed 10 June 2026
3:00pm (GMT +8)

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MWKA ONLINE TALKS
**Breaking a Deadlock Between
Co-proprietors of Land In Malaysia**



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Trusted by small medium enterprises (SMEs),
family businesses and individuals since 1985.

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About Us

- Welcome to MahWengKwai & Associates!
- Trusted by small medium enterprises (SMEs), family businesses and individuals.
- Established in 1985 by Dato' Mah Weng Kwai, now a consultant with the firm.
- Medium-sized law firm with 33 lawyers and 30 staff.

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Dispute
Resolution



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Individuals &
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 - Dispute Resolution
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 - Individuals & Families

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Our Practice Groups

- 5 Practice Groups:
 - ASEAN-China Desk
 - Construction
 - Foreign Direct Investment
 - Real Estate
 - Sports & Esports

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MWKA Online Talks

- To share knowledge, raise awareness, encourage networking
- For clients, potential clients, in-house counsel
- Recent MWKA Online Talk:
 - 20.5.2026: Friendly Loans: Protecting and Recovering Your Money and Interest
- Upcoming MWKA Online Talk:
 - 24.6.2026: Sexual Harassment Complaints in the Workplace: Managing Risk, Compliance and Tribunal Proceedings



Joseph Khor

Senior Associate

- ❖ Co-heads MWKA's Land and Real Estates Disputes Team and also practices in MWKA's Corporate and Company Litigation Team
- ❖ Particular experience in corporate and company disputes include acting for company directors in actions brought against them, as well as acting for various parties in derivative actions, shareholder disputes, corporate insolvency and corporate fraud

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Keerthana Aiswarya

Associate

- ❖ Associate in our Dispute Resolution Department
- ❖ Bachelor of Laws (Hons) from Northumbria University in Newcastle, United Kingdom, in 2020. She subsequently completed the Bar Professional Training Course (BPTC) at the same university
- ❖ Admitted to the High Court of Malaya in February 2025
- ❖ Keerthana's current practice area is land acquisition.

Talk Points

- Understanding the rights and limitations of Co-proprietors under Malaysian land law
- Common disputes and practical strategies to resolve deadlocks
- Legal considerations for terminating a Co-proprietorship
- Court proceedings: procedures, evidential requirements, and available remedies

Introduction



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Cayden

Brandon

Aiden

Ah Kau

London

Muthudon

Alidon

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Section 342 NLC 1960

CO-PROPRIETORSHIP

342. Meaning of co-proprietorship, and when it arises.

(1) In this Act "co-proprietorship" means the holding of alienated land by two or more persons or bodies in undivided shares.

(2) All alienated land vested in two or more persons or bodies shall be held by them as co-proprietors unless, pursuant to section 344 or 346, or the corresponding provisions of any previous land law, they are registered as trustees or representatives

What is a Co-Proprietorship?

1. Under the **National Land Code 1965 (NLC)**, Co-proprietorship refers to alienated land owned by two or more individuals or entities.
2. Each Co-proprietor holds an undivided interest in the same property.
3. The National Land Code treats Co-proprietors of alienated land as holding separate undivided shares (tenancy in common), rather than as joint tenants.
4. Every Co-proprietor owns a distinct and divisible share of the property.
5. The arrangement applies to all alienated land registered in the names of multiple owners.
6. **Exception:** It does not apply where the registered owners hold the land solely as trustees.

Section 343 NLC: Incidents of Co-Proprietorship

- **Equal Shares Presumed (s. 343(1)(a))**
 - Shares are deemed equal unless different proportions are specified in the register document of title.
- **Right to Partition (s. 343(1)(b))**
 - Co-proprietors may apply for partition of the land.
- **Right to Possession and Enjoyment (s. 343(1)(b))**
 - Each Co-proprietor is entitled to possession and enjoyment of the whole property while the Co-proprietorship subsists.
- **No Right of Survivorship (s. 343(1)(c))**
 - A deceased Co-proprietor's share does not automatically pass to the surviving Co-proprietors.
- **Devolution of Share Upon Death (s. 343(1)(c))**
 - The deceased's share devolves upon his or her personal representatives and forms part of the estate.

Section 343 NLC: Title Document Provisions

- **Custody of Original Title (s. 343(2))**
 - The original issue document of title is retained by the Registrar unless otherwise agreed by the Co-proprietors.
- **Issue and Recording of Copy of Title (ss. 343(3)–(5))**
 - A Co-proprietor may obtain a copy of the title upon payment of the prescribed fee.
 - The copy is issued only when the original title is in the Registrar's custody and its issuance is recorded on the register.
- **Use of Copy of Title (ss. 343(6)–(7))**
 - The copy may be used to transfer, charge, or create a lien over the Co-proprietor's undivided share.
 - The copy is retained and destroyed by the Registrar upon registration of the transfer or sale.

Tenancy in Common under the National Land Code

- Co-proprietorship under the NLC is treated as a tenancy in common rather than a joint tenancy.
- Each Co-proprietor holds an **undivided but separate share** in the land.
- There is **no right of survivorship**.
- **Section 343(1)(c) NLC:**
 - On death, a Co-proprietor's share does **not pass to surviving Co-proprietors**.
 - Instead, it **devolves to the deceased's estate (personal representatives)**.

Rights and the “Consent Problem”

- Each Co-proprietor has a right to the **whole property**, not a physical portion.
- Major dealings typically require **unanimous consent**, including:
 - Sale of land
 - Development
 - Charging to a bank (mortgage)
- This creates a **“veto effect”**
 - One Co-proprietor can block decisions, even against majority interest
- Result: the asset may become **economically underutilised or frozen.**

The Breakdown of Co-Proprietorship Deadlocks

How Co-proprietorship Deadlocks Arise

- **Conflicting intentions**
 - Some owners want to sell, others want to hold or develop.
- **Exclusive occupation disputes**
 - One co-owner occupies the property exclusively, often without compensation or agreement.
- **Inheritance fragmentation**
 - Property passes across generations without proper estate administration.
 - Leads to an increasing number of Co-proprietors over time.
- **Outcome:** Delays or inability to make key decisions regarding sale, development, or utilisation of the land, resulting in prolonged Co-proprietorship disputes.

Socio-Economic Impact – Multiple Ownership on Land

- Repeated inheritance causes **shares to become extremely small (“microscopic shares”)**
- This leads to **many owners holding very small but legally equal rights over the same land**
- **Real case example: *Kampong Bharu landholding dispute***
 - A single 809 m² lot is owned by **141 Co-proprietors**
 - The smallest recorded share is **7/424,320**
 - This is approximately **0.013 m² per person**
 - At RM1,000 per m², the share is worth only about **RM13.35**
- Despite the tiny value, each co-owner still holds:
 - **Equal legal rights to the entire land**
 - Including the ability to **block decisions (e.g., sale or development)**
- Key issue:
 - **Legal rights remain powerful even when economic value becomes negligible**

Commercial Consequences of Co-proprietorship Deadlocks

- **Decline in Property Value**
Land becomes less attractive to buyers due to ownership disputes and uncertainty.
- **Difficulty in Selling**
Sale of the property is often blocked when Co-proprietors cannot agree on disposal.
- **Limited Financing Options**
Banks are reluctant to accept or finance property with unresolved Co-proprietorship issues.
- **Strained Family Relationships**
Disputes over land use and control often lead to long-term family conflict.

Termination of Co-proprietorship

Terminating Co-Proprietorship

The NLC provides clear legal mechanisms for Co-proprietors to terminate a co-ownership arrangement when it is no longer workable.

A Co-proprietorship may be terminated through:

1. Mutual Agreement

Where all Co-proprietors agree on a solution, such as:

- a) Partition of the land;
- b) Transfer of one Co-proprietor's share to another; or
- c) Sale of the property and distribution of the proceeds.

2. Court Intervention

Where a deadlock arises and agreement cannot be reached, the court may intervene and make orders to:

- a) Partition the land;
- b) Facilitate the transfer of shares; or
- c) Order the sale of the property and terminate the Co-proprietorship.

Voluntary Partition (Section 140 NLC)

Co-proprietors may **agree to partition the land**.

Outcome of partition:

- Separate individual titles are issued
- Each owner becomes sole owner of their portion
- Co-proprietorship is brought to an end

Generally the **simplest and most cost-effective option**.

Regulatory Requirements (Sections 141–143A NLC)

Partition is subject to **statutory and authority approval**.

Key considerations include:

- Planning and development requirements
- Land use restrictions (e.g. agricultural land rules)
- Compliance with local authority regulations
- Necessary consents where required by law

Ensures partition is **legally and physically feasible**.

Partition Without Unanimous Consent (Section 141A NLC)

- **Section 141A NLC** allows partition applications even where:
 - Not all Co-proprietors cooperate
 - Unanimous consent cannot be obtained
- Ensures Co-proprietorship disputes do not completely block resolution.
- **Despite Section 141A**, administrative partition often fails due to strict legal conditions.
- Partition must not contravene zoning laws, planning authority requirements, or minimum area restrictions under **Section 136 NLC**.

Section 136(1)(f)(i) NLC

136. Conditions for approval of sub-division

(1) No sub-division shall be approved by the State Director or, as the case may be, Land Administrator unless the following conditions are satisfied_

(f) that the area of any sub-divisional portion-

(i) in the case of land subject to the **category "agriculture", or to any condition requiring its use for an agriculture purpose, will not be less than two-fifths of a hectare**

- Even with unanimous consent, the Land Office cannot approve a partition if the resulting agricultural lots are smaller than the statutory minimum of 0.4 hectares. For example, **a 1-hectare agricultural parcel cannot be partitioned into four lots of 0.25 hectares each.**
- Co-proprietors would need to consider a buy-out, transfer of shares, or sale of the land instead.

Judicial Intervention

Court Intervention

The court may step in where:

- A Co-proprietor refuses to consent or cooperate, or
- Legal/statutory requirements prevent normal partition

When Co-proprietors reach a deadlock, relief may be sought under **Section 145(1) NLC**, which empowers the court to make appropriate orders to resolve the dispute and bring the Co-proprietorship to an end.

Section 145 NLC

(1) Where, in the case of any land vested in co-proprietors-

(a) any of the co-proprietors will neither join in, nor consent to the making of, an application for partition under this Chapter, or

(b) by reason of the operation of paragraph (f) of subsection (1) of section 136 (as applied by section 141), partition of the land between all of the co-proprietors is incapable of being approved under this Chapter,

the Court, subject to and in accordance with the provisions of any law for the time being in force relating to civil procedure, may, on the application of any of the co-proprietors, make such order as it may think just for the purpose of enabling the co-proprietorship to be terminated.

What Orders Can the High Court Make?

Under **Section 145(2) NLC**, the Court has broad discretion to bring Co-proprietorship to an end by ordering:

- **Partition of the Land**
 - The Court may deem an application for partition to have been made by all Co-proprietors and direct that the land be divided.
- **Transfer of Shares (Buy-Out)**
 - The Court may order one or more Co-proprietors to acquire the undivided share of another Co-proprietor on terms specified by the Court.
- **Sale of the Property**
 - The Court may order the land to be sold and direct how the sale proceeds are to be distributed among the Co-proprietors.

Order 31 Rules of Court 2012

- To execute a sale, we utilize **Order 31 Rule 1 ROC 2012:**

"Where in any cause or matter relating to any immovable property it appears **necessary or expedient** for the purposes of the cause or matter that the property or any part thereof should be sold, the Court may order that property or part to be sold..."

The "Necessary or Expedient" Threshold

- Malaysian courts have consistently held that a factual "impasse" or "deadlock" between Co-proprietors satisfy the requirement for a sale being "necessary or expedient".
- When parties cannot agree and relationships break down, a judicial sale is the most practical solution to end the deadlock.

Ong Chin Hai & Anor v Ong Hoo See & Ors [2022] 5 MLJ

- In this case, the Court of Appeal provided definitive clarification on the application of s.145, conclusively settling the legal position:

"There was also no requirement under NLC 1965 for the co-proprietor who wished to terminate his co-proprietorship on the land to show that he had applied for the land to be partitioned, but the application was rejected before he could come to court under s 145 of NLC 1965."

- The issue before the Court was whether a co-proprietor must first apply for partition at the Land Office before commencing court proceedings. The Court held that there is no requirement to first pursue, or be rejected in, a partition application before filing in court. Accordingly, it confirmed that **Section 145 NLC** is an independent statutory remedy, which may be invoked directly where a Co-proprietorship has broken down.

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Koh Boh Huat & Ors v Tan Niam Neo & Anor [2007] 1 MLJ 328

- In *Koh Boh Huat & Ors v Tan Niam Neo & Anor*, the plaintiffs owned 9/10 of agricultural land while the defendants owned 1/10 and unreasonably blocked a proposed sale to a developer. The court held that

“Since under s 141 thereof, any proposal to partition the land by the plaintiffs as co-proprietors holding 9/10 undivided majority share is not possible as the subdivided portions will be less than the required two-fifths (0.4) of a hectare, it was necessary for the plaintiffs as majority co-proprietors to invoke s 145 which confers upon the court the power to facilitate termination of the co-proprietorship”

- The court accordingly ordered a public auction of the property despite the minority objections.

Kumaradevan Rajadevan v. Jeevamalar a/p Kumarasubramaniam

MLJU 966 [2024]

- In *Kumaradevan v Jeevamalar*, the dispute involved a mother and son who jointly owned a house in Bangsar, but the relationship had irretrievably broken down. The mother remained in exclusive occupation of the property, treated it as her own, and refused to sell or cooperate.
- The Plaintiff in this case successfully argued that:
"partition is impracticable: costs would be excessive, approvals uncertain, and any subdivision would render lots unreasonably small given the double-storey house on the land".

- The High Court accepted this reasoning and held that continuing joint ownership was no longer viable:

“Continuing joint ownership is impracticable. A sale is necessary and expedient to resolve the deadlock”

- In ordering the sale, the Court stated:

"[34]...this Court is satisfied that the sale of the Property has become necessary and expedient to resolve the deadlock. Consequently, the most practical method to resolve the impasse between the Plaintiff and the Defendant is by way of a court order for an Order for sale and that the sale to be effected by a public auction..." .

- To prevent obstruction by an uncooperative co-owner, the Court further ordered that:

“If the Defendant fails to sign all the documents ... the senior assistant registrar [is authorised] to sign all the said documents on behalf of the Defendant.”

Chu Chai Yin & Anor v Lim Mee Wan [2024] MLJU 1244

- In the case of *Chu Chai Yin*, the dispute arose where former business partners jointly owned a property, while an arbitration relating to the underlying partnership was still ongoing. The defendant argued that the property could not be sold due to the pending arbitration and demanded RM1,000,000 for her 1/3 share. The High Court rejected this position and held:

"[14]...The deadlock is undeniable. This Court is therefore empowered to resolve such an impasse by ordering a sale of the Property... even if the requirements under s 145(1) NLC were not met, this Court still has the power to direct a sale instead of a partition under s 25 Courts of Judicature Act..."

-
- The Court reaffirmed that **Section 25(2)** and **Paragraph 3 of the Schedule to the Courts of Judicature Act 1964** confer wide powers on the High Court to order a sale instead of partition and that in any matter concerning land, the Court may direct the sale of the property where such an order is necessary or expedient and may issue all consequential directions required to ensure the effective implementation of the sale.

-
- Additionally, the court further clarified that the existence of a bank charge does not prevent a court-ordered sale of co-owned property.
 - The court set out a clear framework for distributing the sale proceeds:

"The sale proceeds of the Property are first to be utilised to pay off the sum due to the bank to redeem the Property... Then, to pay off all costs... The remains of the sale proceeds to be distributed one-third to each party respectively."

- This structure ensures that the bank is first fully redeemed, all costs of sale are settled, and the remaining proceeds are then fairly distributed among the Co-proprietors.

Litigation Roadmap

Litigation Roadmap (Suggested Steps 1–2)

Valuation & Notice (Evidential Steps)

- Obtain market valuation of the property (to support sale / buy-out assessment).
- Issue notice of intention to sell or resolve co-ownership.
- Refusal or silence from the other co-proprietor may evidence a deadlock.

Commencement of Proceedings

- File an Originating Summons supported by affidavit evidence.
- Generally appropriate as **Section 145 disputes involve statutory interpretation, subject to case complexity.**

Litigation Roadmap (Step 3 – Court Order & Implementation)

- Court may grant an Order for Sale where sale is necessary or expedient.
- Court may issue consequential directions, including:
 - a. Appointment of auctioneer
 - b. Fixing of reserve price (based on valuation evidence)
 - c. Distribution of sale proceeds among co-proprietors
- Enforcement safeguards:
 - a. Court may issue directions to ensure compliance
 - b. Includes authorisation for a court officer (e.g. Registrar) to execute documents where a party refuses to cooperate

Questions?

Upcoming Talks

Date	Topic	Speakers
24 June 2026 (Wednesday)	Sexual Harassment Complaints in the Workplace: Managing Risk, Compliance and Tribunal Proceedings	Sonia Mohanacomar & Kirthika Padmanapan



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