Tan Boon Heng *v* Lau Pang Cheng David
[2013] SGCA 48

Case Number	: Civil Appeal No 119 of 2012
Decision Date	: 04 September 2013
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA; Quentin Loh Sze-On J
Counsel Name(s)	: Ramesh Appoo, Susila Ganesan and Rajashree Rajan (Just Law LLC) for the appellant; Goh Teck Wee (Goh JP & Wong) for the respondent.
Parties	: Tan Boon Heng — Lau Pang Cheng David

Civil Procedure – Appeals

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2013] 1 SLR 783.]

4 September 2013

Chao Hick Tin JA (delivering the grounds of decision of the court):

1 This case arose from a road traffic accident in 2006. Liability was apportioned by consent, and the issue of damages was assessed by an assistant registrar ("the AR"). Dissatisfied with the outcome of the assessment, the appellant (who was the defendant below) appealed against the AR's decision to a High Court judge in chambers ("the Judge"). The appeal was dismissed: see *Lau Pang Cheng David v Tan Boon Heng* [2013] 1 SLR 783 ("GD"). The appellant then appealed the Judge's decision to the Court of Appeal, resulting in the present proceedings. After hearing arguments from both parties, we unanimously dismissed the appeal with costs fixed at $12,000 to the respondent.

2 Apart from the substantive merits of the case which concerned the proper award of damages for the injuries suffered by the respondent plaintiff, an important legal issue was also canvassed before us, namely, what were the applicable principles governing a High Court judge's review, on appeal, of a decision made by the Registrar, the deputy registrar or an assistant registrar of the Supreme Court ("the Registrar") in an assessment of damages, particularly in relation to the Registrar's specific findings of fact based wholly on the oral evidence of witnesses adduced before him, as well as his finding(s) based on both oral and documentary evidence. These grounds of decision are delivered essentially to address this very issue.

Facts

3 The facts of this case are uncomplicated and may be shortly stated. The respondent is a surgeon specialising in ear, nose and throat. On 15 January 2006, he was cycling along the West Coast Highway when he was involved in a collision with a motor vehicle driven by the appellant. The bicycle was mangled and the respondent's helmet cracked.

4 The question of liability was resolved by consent and, on 15 July 2010, an interlocutory judgment was given in the District Court ("DC") in the respondent's favour. Under this judgment, the appellant shouldered 95% of liability, and the respondent 5%. The DC also ordered that damages were to be assessed.

5 Subsequently, on 20 September 2011, because it was thought that the damages assessed could exceed the jurisdictional limit of the DC, which is $250,000, the action was transferred to the High Court. The assessment of damages was heard by the AR over seven days during the period between 5 March 2012 and 13 April 2012. On 31 May 2012, the AR awarded the respondent damages amounting to $281,877.75, excluding interest. The appellant was dissatisfied with the AR's awards under four particular heads of relief, and appealed. The matter came before the Judge, who dismissed the appeal on 21 August 2012. The appellant then appealed against the Judge's decision to this court.

Our decision

6 This court may, of course, interfere with the decision of a judge in chambers (in relation to an appeal from the Registrar), but only on well-established principles of appellate intervention: *C M Van Stillevoldt BV v E L Carriers Inc* [1983] 1 WLR 207 at 208–209. At the stage when the matter comes before the Court of Appeal, it is the judge's exercise of discretion that will be examined *even if* he had adopted the reasons and decisions of the Registrar below: *Evans v Bartlam* [1937] AC 473 ("*Evans v Bartlam*") at 484; *Cooper v Cooper* [1936] 2 All ER 542 at 543–544. As will be elaborated on later, when the Registrar conducts an assessment of damages he is exercising a delegated jurisdiction, and while the Registrar may exercise his discretion in any way he deems fit, in an appeal against his decision the judge is free to exercise a fresh discretion.

7 In an appeal against the decision of a judge on an assessment of damages, the Court of Appeal may vary the quantum of damages awarded by the judge only if it is shown that the latter: (a) acted on the wrong principles; (b) misapprehended the facts; or (c) had for these or other reasons made a wholly erroneous estimate of the damages: *Singapore Airlines Ltd v Tan Shwu Leng* [2001] 3 SLR(R) 439 at [11]–[13]. In a sense these principles are really quite similar to those which apply in other situations (besides in the context of an assessment of damages) where a judge exercises his discretion in coming to a decision, *ie*, the Court of Appeal can only intervene to overrule that exercise of discretion where: (a) the judge was misguided with regard to the principles under which his discretion was to be exercised; (b) the judge took into account matters which he ought not to have or failed to take into account matters which he ought to have; or (c) the judge's decision was plainly wrong: see, *eg*, *Hong Leong Bank Bhd v Soh Seow Poh* [2009] 4 SLR(R) 525 at [45].

8 Counsel for the appellant sought at the hearing before us to point out the deficiencies in the Judge's reasoning, but we were not persuaded. Having carefully perused the GD and the parties' submissions before us, we did not think that the Judge, in affirming the AR's assessment of damages, had, in any way, acted on wrong principles, misapprehended the facts, or made a wholly erroneous estimate of the damages. We thus found no grounds warranting appellate intervention in this case, and the appeal failed on the merits.

Applicable principles governing the review of the Registrar's decision in an appeal to a judge in chambers

9 In his GD the Judge examined the applicable principles governing a review of the Registrar's decision in an appeal to a judge in chambers. His conclusions may be summarised as follows:

(a) A judge in chambers hearing an appeal against the Registrar's decision was not exercising appellate jurisdiction but a form of confirmatory jurisdiction, because the Registrar only exercised substituted, and not primary, jurisdiction. The judge in chambers was therefore not bound by the Registrar's exercise of discretion (GD at [15]–[16]).

(b) In respect of the Registrar's findings of fact on the oral as well as documentary evidence, the judge in chambers would suffer from the same disadvantages that the Court of Appeal faced in relation to similar factual findings made by a trial judge. On this account, the judge in chambers should be reluctant to reverse the findings of the Registrar (GD at [18]–[19]).

10 Before us, the appellant contended that the Judge had incorrectly stated the legal position. In his submission, a judge in chambers was at liberty to intervene with the Registrar's findings of fact and to exercise his discretion in an unfettered manner if the circumstances and evidence warranted such intervention. It would otherwise be pointless to describe the appeal before the judge as being "*de novo*".

11 The respondent took a different view. He submitted that the standard of review by the judge in chambers of the Registrar's findings would depend on how the decision was arrived at below. Where the Registrar was hearing an assessment of damages, as distinguished from interlocutory matters, he would have to hear witnesses orally, observe their demeanour under cross-examination and assess their credibility. On appeal, therefore, the judge in chambers should be slow to disturb the Registrar's findings of fact which were dependent upon his assessment of the witnesses before him, an advantage which the judge in chambers would not have.

12 While past cases have discussed some of the issues surrounding the standard of review of a decision of the Registrar, we note that this court has not had the opportunity to squarely address the question as to the appropriate standard which the judge in chambers should apply when reviewing a finding of fact of the Registrar based on oral evidence adduced before him. We think it useful to begin by touching briefly on the general nature of an appeal from the Registrar to a judge in chambers.

The Registrar's position

13 The jurisdiction and functions of the Registrar are set out in s 62(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), which provides that the Registrar has the jurisdiction, powers and duties as prescribed by the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules"). Of relevance here is O 32 r 9(1) of the Rules, which reads:

> **Jurisdiction of Registrar (O. 32, r. 9)**
>
> **9.**—(1) The Registrar of the Supreme Court shall have power to transact all such business and exercise all such authority and jurisdiction under any written law as may be transacted and exercised by a Judge in Chambers except such business, authority and jurisdiction as the Chief Justice may from time to time direct to be transacted or exercised by a Judge in person or as may by any of these Rules be expressly directed to be transacted or exercised by a Judge in person.

14 As has been observed in earlier cases, the Registrar is given such powers, authority and jurisdiction for administrative convenience, in a bid to save the time of the judge: *Lassiter Ann Masters v To Keng Lam (alias Toh Jeanette)* [2004] 2 SLR(R) 392 ("*Lassiter Ann Masters*") at [20]; *Ang Leng Hock v Leo Ee Ah* [2004] 2 SLR(R) 361 ("*Ang Leng Hock*") at [15]. The Registrar therefore exercises what is sometimes called delegated jurisdiction: see, *eg*, *Tidswell v Tidswell (No 2)* [1958] VR 601 ("*Tidswell*") at 605; *Sansom v Sansom* [1966] P 52 at 53.

15 One of the matters on which the Registrar may adjudicate pertains to the assessment of damages, as stated in O 37 r 1(1) of the Rules:

Assessment of damages by Registrar (O. 37, r. 1)

1.—(1) Where judgment is given for damages to be assessed and no provision is made by the judgment as to how they are to be assessed, the damages shall, subject to the provisions of this Order, be assessed by the Registrar, and the party entitled to the benefit of the judgment shall, within one month from the date of the judgment, apply to the Registrar for directions and the provisions of Order 25, Rule 3 shall, with the necessary modifications, apply.

16 A decision made by the Registrar is appealable to a judge in chambers, following O 56 r 1(1) of the Rules:

Appeals from decisions of Registrar to Judge in Chambers (O. 56, r. 1)

1.—(1) An appeal shall lie to a Judge in Chambers from any judgment, order or decision of the Registrar.

In this regard, previous cases have noted that where the Registrar's decision is taken up to a judge in chambers, that is not an "appeal" in the true sense unlike an appeal from a decision of a High Court judge to the Court of Appeal: *Chang Ah Lek and others v Lim Ah Koon* [1998] 3 SLR(R) 551 ("*Chang Ah Lek*") at [20]; *Teo Eng Chuan v Nirumalan V Kanapathi Pillay* [2003] 4 SLR(R) 442 at [14]. This is undoubtedly correct, considering that the Registrar is exercising powers and jurisdiction devolved to him from those vested in a High Court judge. It is therefore settled that a judge in chambers who hears a Registrar's Appeal is not exercising an appellate jurisdiction—for that term would only be accurate and applicable where the appealed decision emanates from an inferior court or tribunal—but *confirmatory* jurisdiction instead: *Herbs and Spices Trading Post Pte Ltd v Deo Silver (Pte) Ltd* [1990] 2 SLR(R) 685 at [11]–[12]; affirmed in *Lassiter Ann Masters* at [12]–[13].

17 It will be observed that the appellate process described immediately above differs markedly from the position in England before the Civil Procedure Rules 1998 (SI 1998 No 3132) (UK) ("CPR") were introduced there in 1999. Prior to the CPR, a decision of the master in the High Court was appealable to a judge in chambers, unless the decision was given or made on an assessment of damages or on the hearing or determination of any cause, matter, question or issue tried before him, in which case the appeal would, with leave, lie directly to the Court of Appeal: O 58 rr 1 and 2 of the Rules of the Supreme Court 1965 (SI 1965 No 1776) (UK) ("English Rules of Court"). Therefore a distinction was drawn between an interlocutory decision and a decision made at trial or on an assessment of damages. An appeal from the former would lie to a judge in chambers, while an appeal on the latter lay to the Court of Appeal.

18 This jurisdictional dichotomy had a functional aspect to it. In an appeal against a master's decision in an interlocutory matter, the judge in chambers was entitled to exercise an unfettered discretion, although due weight should be given to the former's decision: *Evans v Bartlam* at 478. Where a master's decision in an assessment of damages was concerned, however, the Court of Appeal could only interfere with his exercise of discretion if the damages had been assessed on a wholly erroneous basis: see, *eg*, *Fielding v Variety Incorporated* [1967] 2 QB 841 at 851 and 853, applying *Davies v Powell Duffryn Associated Collieries Ltd* [1942] AC 601 ("*Powell Duffryn*"). Presumably the other grounds for interference stated in *Powell Duffryn* would have been applicable here too, *eg*, if the decision maker had acted on a wrong principle of law or misapprehended the facts (at 617).

19 Then, as mentioned, in 1999 a sea change was effected by the CPR, although it did preserve some parts of the dichotomy described at [17] above. We will briefly mention the current position in

England if only to show its differences with our system. Rule 2.4 of the CPR provides that a master of the High Court may perform any act unless provided otherwise by an enactment, rule or practice direction. Paragraph 4.2 of Practice Direction 2B of the CPR then says that a master may assess the damages due to a party under a judgment. Now, an interim decision of the master is always appealable only to a judge, but a final decision in a multi-track claim brought under Part 7 of the CPR is appealable (with permission) to the Court of Appeal: para 3.5 of Practice Direction 52A of the CPR. A judgment at the conclusion of an assessment of damages is considered a final decision for this purpose: para 3.8 of Practice Direction 52A of the CPR.

20 In an appeal against an interim decision of the master, a judge may now only interfere with that decision if it is wrong or is unjust because of a serious procedural or other irregularity in the proceedings: see r 52.11(3) of the CPR; *Tanfern Ltd v Cameron-MacDonald (Practice Note)* [2000] 1 WLR 1311 at [31]. With respect to an appeal against a final decision of the master in an assessment of damages, the Court of Appeal (should it hear the matter) has held that it will only interfere with the master's determination if the latter erred in law, or if his decision was against the weight of the evidence: *Gorne v Scales* [2006] EWCA Civ 311 at [56].

21 Two observations can be made from this short discussion of the English position. First, unlike in England where there are parallel tracks of appeal from a decision of the master, in Singapore *all* decisions of the Registrar (whether interlocutory or final) must first proceed on appeal to the judge in chambers, and only thereafter to the Court of Appeal (assuming that leave requirements, if any, have been met). Second, in England, because the English Rules of Court provided for direct appeal to the Court of Appeal in respect of an award of damages made by the master, such an award of the master was, to all intents and purposes, regarded as a decision of the High Court judge. This explains the reluctance of the English Court of Appeal to interfere with the master's assessment on appeal, for in hearing such an appeal the Court of Appeal would be exercising a true appellate jurisdiction. The position in Singapore is different—whether the appeal from the Registrar's decision relates to an interlocutory matter or an assessment of damages, the judge in chambers exercises a confirmatory jurisdiction and is entitled to exercise his discretion afresh. The distinct question raised in the instant appeal was whether, and on what grounds, a judge in chambers could upset a specific finding of fact made by the Registrar after the hearing of oral evidence, bearing in mind that the latter would have had the advantage of seeing and hearing the witnesses testifying in person. Would the judge be entitled to make the finding *de novo*?

The current state of the law

22 The applicable principles governing the intervention by a judge in chambers in a decision of the Registrar were restated in *Chang Ah Lek*, where this court pronounced that the judge was to decide an appeal from the Registrar as though the matter came before him for the first time (at [20]). These principles were again affirmed in *Poh Huat Heng Corp Pte Ltd and others v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003 (at [14]). Arguments which were not raised before the Registrar below may properly be considered by the judge in chambers on appeal: *Blundell v Rimmer* [1971] 1 WLR 123 at 127–128. It is also settled principle that the judge in chambers is entitled to exercise his discretion unfettered by that of the Registrar, although due weight should be given to the latter's decision: *Lassiter Ann Masters* at [10].

23 However, every exercise of a judicial discretion is invariably grounded upon due ascertainment of the facts. In our legal system this is a given, as is also the case in England: see, *eg*, *Tan Yu Min Winston (by his next friend Tan Cheng Tong) v Uni-Fruitveg Pte Ltd* [2008] 4 SLR(R) 825 at [47]; *Apted v Apted* [1930] P 246 at 255. Due ascertainment of the facts obviously entails cognisance of the primary objective evidence, as well as the findings of fact (where there are factual disputes) at

first instance. To say, therefore, that the discretion of a judge in chambers is unfettered raises this question: how is the judge to treat the Registrar's findings of fact when he hears an appeal on the latter's decision?

24 We note that the cases cited at [16] above do not deal specifically with this question. In our view, there is a difference between the situation where the Registrar's findings of fact are based solely on affidavit or documentary evidence, and that where his findings are based partly or wholly on the oral evidence taken by him. In the former instance, a judge in chambers will have little difficulty in deciding the matter afresh as he will have all the necessary evidence, materials and information before him. In other words, the judge is in as good a position as the Registrar to exercise the discretion afforded to him. In the latter instance, however, the judge in chambers is faced with two considerations which are not always consonant, as alluded to by Woo Bih Li J in *ACU v ACR* [2011] 1 SLR 1235 (at [15]). The judge knows that he is entitled to exercise his discretion afresh, but he also has to contend with the Registrar's findings of fact based on the oral evidence which, as the primary fact finder, the Registrar was best placed to decide, having had the advantage of observing how each witness gave his or her evidence. Should the judge not then treat these findings with some degree of deference, and if so, to what degree?

25 As mentioned, the Judge thought that a judge in chambers should *not* have an unfettered power of review over the Registrar's findings of fact on the evidence, *whether oral or documentary*. In our view, that statement is too broad and not entirely apt as we think that a distinction ought to be drawn between a finding of fact which is based on the oral evidence and a finding based on affidavit or documentary evidence.

The Registrar's findings of fact on the oral evidence

26 Several decisions of the High Court have touched on the deference to be accorded to a finding of fact of the Registrar based on the oral evidence adduced before him. In *Teo Seng Kiat v Goh Hwa Teck* [2003] 1 SLR(R) 333 ("*Teo Seng Kiat*"), G P Selvam J concluded that a judge in chambers should exercise his discretion based on the evidence taken by the Registrar and the latter's findings on the same (at [7]):

> [T]he law [is settled] that an assessment of damages which comes on appeal to a judge in chambers is quite unlike an appeal from a trial judge to the Court of Appeal. The restrictions that bind the Court of Appeal do not limit the function of the judge. The judge addresses the issues before him and assesses the damages *de novo*. *He makes his own findings* ***based, however, on the evidential material written and collected by the Registrar and the findings made by him*** . [emphasis added in italics and bold italics]

27 From this quote it would seem that Selvam J merely stated the general rule that the judge in chambers will look at the case *de novo* and that the judge is not bound by what the Registrar decides. What is less clear from this extract is the last part of the final sentence, "He [the judge] makes his own findings based … on … the findings made by *him*" [emphasis added]. It seems to us that the last word "him" must refer to the Registrar, for otherwise the sentence would not make sense. If this is the correct way to read this sentence, then what Selvam J seemed to suggest was that a judge in chambers was bound by the Registrar's findings. Of course, he did not expressly draw a distinction between a finding of fact made by the Registrar based on oral as opposed to documentary evidence. We note that he mentioned "material written and collected by the Registrar", which suggests that he had in mind *oral* evidence adduced before the Registrar. Selvam J also did not elaborate on what he meant by "based … on", *ie*, the circumstances where the judge in chambers should follow the findings of the Registrar and the circumstances where he need not. We note, finally,

that *Teo Seng Kiat* was followed without demur in *Tan Siew Bin Ronnie v Chin Wee Keong* [2008] 1 SLR(R) 178 (at [18]).

28 A more nuanced position was taken in *Sie Choon Poh (trading as Image Galaxy) v Amara Hotel Properties Pte Ltd* [2008] 2 SLR(R) 1076. There, Andrew Ang J held that a judge in chambers should be especially slow to interfere with the Registrar's findings of fact if the Registrar had taken oral evidence (at [4]):

> 4 It is settled law that a judge in chambers hearing an appeal from a decision of the AR exercises a confirmatory jurisdiction. The judge deals with the matter as though it came before him for the first time and is entitled to exercise an unfettered discretion of his own: *per* Chan Sek Keong J (*obiter*) in *Herbs and Spices Trading Post Pte Ltd v Deo Silver (Pte) Ltd* [1990] 2 SLR(R) 685 at [12] affirmed by the Court of Appeal in *Augustine Zacharia Norman v Goh Siam Yong* [1992] 1 SLR(R) 746. *Nevertheless, unless there are grounds upon which he differs from the AR, he should be slow to disturb the AR's findings, particularly where the AR's decision involved an examination of witnesses.* Due weight should be given to the decision of the AR: *Evans v Bartlam* [1937] AC 473 followed by the Court of Appeal in *Chang Ah Lek v Lim Ah Koon* [1998] 3 SLR(R) 551. [emphasis added]

29 In the later case of *Akhinur Nashu Kazi v Chong Siak Hong (trading as Hong Hwa Marine Services)* [2009] SGHC 138, Judith Prakash J heard an appeal against an assistant registrar's decision in an assessment of damages. In dismissing the appeal, Prakash J stated her view that unless the assistant registrar's findings of fact were not supported by the evidence, she could not vary those findings since the latter had had the benefit of seeing the witnesses in person and gathering a first person overall impression of the presentation of the case and the evidence (at [74]).

30 Then, in *Clark Jonathan Michael v Lee Khee Chung* [2010] 1 SLR 209, Prakash J again expressed her opinion on this issue but adopted a different test, *ie*, the assistant registrar's findings of fact should not be disturbed unless they were plainly wrong or against the weight of the evidence. She also added that whether a finding of fact was plainly wrong would depend, to a large extent, on how the lower court came to its conclusion (at [6]).

31 We turn next to the decision in *Teo Ai Ling (by her next friend Chua Wee Bee) v Koh Chai Kwang* [2010] 2 SLR 1037. There the assistant registrar, having heard the oral testimony from six medical experts called by the plaintiff and one medical expert by the defendant, found that there was a real possibility that the plaintiff might fail her polytechnic examination. On appeal, Steven Chong Horng Siong JC (as he then was), having carefully examined the relevant portions of those testimonies for himself (at [62]–[70]), concluded that "there was sufficient evidence to support the [assistant registrar's] finding" (at [62]). We should, however, add that Chong JC did not fully expound the basis on which he could have interfered with the assistant registrar's finding had he been minded to do so.

32 More recently, in *Compact Metal Industries Ltd v PPG Industries (Singapore) Pte Ltd* [2012] SGHC 91, Lai Siu Chiu J stated that while a judge in chambers could relook the entire evidence tendered to the Registrar below, there was usually reluctance on the part of the judge to depart and disagree with the Registrar's findings of fact (at [115]).

33 Finally, we would refer to some foreign decisions which suggest that the Registrar's findings of fact on the basis of oral evidence should be afforded due deference on appeal. In *G (formerly P) v P (Ancillary Relief: Appeal)* [1977] 1 WLR 1376 ("*G v P*"), a registrar had made orders in ancillary matters proceedings for a husband to pay his former wife maintenance and for their assets to be divided. The wife appealed these orders to a judge in chambers, who took the view that the appeal was not a *de*

novo hearing. The case then went up to the English Court of Appeal, where Ormrod LJ held that the judge in chambers was wrong and ought to have exercised his discretion *de novo*, since the appeal had been brought under r 124 of the Matrimonial Causes Rules 1977 (SI 1977 No 344) (UK), a rule whose operation did not differ in principle from that of O 58 r 1 of the then English Rules of Court relating to an appeal from a registrar's decision to a judge in chambers in the High Court (at 1379). Ormrod LJ went on to consider the position where the registrar had taken oral evidence, and said that a judge in chambers would ordinarily have to consider the registrar's evidential findings when exercising his discretion *de novo* (at 1382):

> *Another question which apparently is causing concern in certain quarters is the problem which arises when the registrar has heard oral evidence.* Nearly always – and I would hope always – the registrar makes a note of the evidence, and if he does not, counsel and solicitors attending should do so. That note of the evidence is, of course, properly available to the judge. *But we are told that on occasions counsel are anxious to re-open the whole inquiry before the judge. It is quite obvious that this will often involve a great waste of time and expense, because so much of the material given in oral evidence in these cases is uncontroversial, and indeed experience shows that conflict of fact is not one of the most important aspects of these hearings.* The facts, once they are got at, are usually accepted and the real conflict arises as to how to deal with the facts as they emerge. Speaking for myself I can see no difficulty about this. *In the ordinary way no doubt the judge will take note of the evidence given before the registrar as part of the material on which he has to make up his mind.* [emphasis added]

However, Ormrod LJ did not expressly deal with the basis upon which the judge would be entitled to come to a finding of fact which was different from that of the registrar.

34 We note that the provision under consideration in *G v P*, r 124 of the Matrimonial Causes Rules 1977, was later replaced by r 8.1 of the Family Proceedings Rules 1991 (SI 1991 No 1247) (UK). This change renamed the registrars in the county court as district judges, but as stated by Thorpe J (as he then was) in *Lauerman v Lauerman (Practice Note)* [1992] 1 WLR 734 ("*Lauerman*") it was also intended to moderate the old practice of hearing appeals from these district judges *de novo*, so that the appellate judge should now ordinarily proceed on the basis of the district judge's findings of fact without further evidence from the parties (at 735). We recognise that these changes were without their equivalent in Singapore, but nevertheless wish to briefly point out the general direction the issue has taken in England. The holding in *Lauerman* was approved of in *Marsh v Marsh* [1993] 1 WLR 744 ("*Marsh*") (at 752), although *Marsh* itself was not followed in *Cordle v Cordle* [2002] 1 WLR 1441, where the court held that a district judge's decision could only be reversed under r 8.1 of the Family Proceedings Rules 1991 if there had been some procedural irregularity or that in conducting the necessary balancing exercise the district judge had taken into account matters which were irrelevant, or ignored matters which were relevant, or had otherwise arrived at a conclusion that was plainly wrong (at [32]). This appears to have represented the position until the Family Proceedings Rules 1991 were revoked in 2011 by operation of law following the repeal of the powers under which those rules were made: see s 109(3) and Schedule 10 of the Courts Act 2003 (c 39) (UK), read with the Courts Act 2003 (Commencement No 14) Order 2010 (SI 2010 No 2921) (UK).

35 For present purposes, therefore, we found Ormrod LJ's views in *G v P* more germane in construing the proper position of a judge in chambers in Singapore, and not the opinions (considered though they were) in subsequent English cases which were decided against the backdrop of legislative developments not replicated in Singapore.

36 Turning to a case from the State of Victoria, Australia, in *Tidswell* a master dismissed the wife's application for permanent maintenance. The wife brought an appeal to Herring CJ sitting in chambers.

The judge considered the English cases and concluded that the Victorian position was similar, so that appeals to a judge in chambers from a master should be regarded as requiring the judge to inquire *de novo* into the questions that came before the master, and to arrive at his own decision and form his own opinion on the evidence before him (at 606–608). Notably, Herring CJ would have given due deference to the master's findings of fact if these had been challenged on appeal because the master had the advantage of seeing the witnesses testify (at 608):

> In view of what I have said and in the light of these authorities that I have cited, I think I must hold that on this appeal I am not bound by the way in which the Master has exercised his discretion but am bound to exercise the discretion for myself, paying such weight to the decision of the Master as appears proper. *No question of credibility arises here; had it done so, I should have hesitated to override any views with regard thereto expressed by the Master, seeing that he had the advantage of seeing the witnesses and hearing them cross-examined.* [emphasis added]

The Victorian rules of court relating to appeals from a master to a judge were amended shortly after Herring CJ's decision to expressly provide that such appeals were to be by way of a re-hearing *de novo*: see Government Gazette No 90 (Vic) (1 October 1958) at p 3215. As these changes were not adopted in Singapore, we need not dwell on them any further.

37 Returning to our case, since the Registrar will generally be the only person who has observed the testimonies in court, he possesses an advantage over any other person who has not had the benefit of such observation—including the judge in chambers. It is apposite here to recall the procedure in a hearing before the Registrar involving an examination of witnesses (*Ang Leng Hock* at [15]):

> [There is] a final decision, albeit by a registrar, which has been taken after a full trial on the merits in that discovery has taken place, documents and affidavits of evidence-in-chief have been filed, *viva voce* evidence has been given and the parties have had the opportunity of cross-examining each other's witnesses.

38 Before we proceed to discuss what ought to be, in our view, the appropriate standard to adopt in deciding whether to disturb the Registrar's findings of fact on the oral evidence, one more matter should be alluded to. Advances in court processes, such as the availability of verbatim transcripts that are electronically recorded, have diminished the previously exclusive advantages of triers of fact: *Goh Sin Huat Electrical Pte Ltd v Ho See Jui (trading as Xuanhua Art Gallery) and another* [2012] 3 SLR 1038 at [55]. However, the present practice in hearings before the Registrar is still for him to take down notes of evidence of witnesses, although parties may specifically request for the electronic recording of oral evidence at a cost. On appeal, therefore, the judge in chambers ordinarily has only the Registrar's notes to rely on when reviewing the oral evidence that gave rise to the latter's findings of fact. Without discounting future improvements to court processes (*eg*, introducing video recordings of proceedings), which may narrow the advantage the Registrar has over the judge in chambers (or even eliminate the advantage entirely), based on the current process of hearing before the Registrar, a judge in chambers may find it difficult not to treat the former's factual findings on the oral evidence with some degree of deference.

The correct standard of review of the Registrar's findings of fact based on oral evidence adduced

39 Having established that a judge in chambers is to give due deference to the Registrar's factual findings on the oral evidence, we now need to consider the degree of deference which should be accorded. There are various High Court decisions which suggest different criteria (whether in form or

substance) to be met before a judge in chambers is entitled to interfere with the Registrar's findings of fact on the oral evidence (*ie*, if there are grounds to disturb the findings, if there is insufficient evidence to support those findings, or if the findings are plainly wrong or against the weight of the evidence: see [28]–[31] above).

40 In this connection, we think it would be helpful to refer to the position where a *trial judge's* findings of fact are on appeal. An appellate court's power of review with respect to such findings is limited because the trial judge is generally better placed to assess the veracity and credibility of witnesses, especially where oral evidence is concerned. However, where it can be established that the trial judge's assessment is plainly wrong or against the weight of the evidence, the appellate court can and should overturn any such finding: *Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 at [41].

41 Subsequently, it was explained in *Thorben Langvad Linneberg v Leong Mei Kuen* [2013] 1 SLR 207 that where an appellate court had access to the same material as the trial judge, it was in as good a position as the trial court to assess the veracity of the witness' evidence, if the assessment of the witness' credibility was based on inferences drawn from: (a) the internal consistency in the contents of the witness' testimony; or (b) the external consistency between the contents of the witness' evidence and the extrinsic evidence (at [13]).

42 In our view, as a matter of logic and common sense, we are unable to see why the standard of review enunciated at [40]–[41] above should not also apply where it is the Registrar who makes the factual findings concerned. We are mindful that in cases where the hearing before the Registrar takes on the characteristics of a full trial or where oral evidence has been recorded (such as assessments of damages, takings of accounts and inquiries), *all the evidence should be presented to the Registrar*, as this court stated in *Lassiter Ann Masters* (at [20]). Fresh evidence should not be allowed to be adduced unless the applicant can show sufficiently strong reasons why that evidence was not adduced before the Registrar and that the evidence satisfies the second and third limbs of the rule in *Ladd v Marshall* [1954] 1 WLR 1489 (hereinafter referred to as "the modified rule in *Ladd v Marshall*"): see *Lassiter Ann Masters* at [24]–[25]; *WBG Network (S) Pte Ltd v Sunny Daisy Ltd* [2007] 1 SLR(R) 1133 at [13]. Therefore, since the Registrar is empowered and will generally be the *only* person to take oral evidence, he stands, in this regard, in exactly the same position as a trial judge, and his findings of fact will have all the characteristics of a judge's findings on the oral evidence in a first instance hearing. It follows that his findings of fact on the oral evidence should be given the *same* degree of deference as that afforded to a trial judge's factual findings. This position is unlikely to create any significant prejudice to litigants, and will instead promote certainty in the legal process. In genuine cases, a party could always apply to the judge in chambers to adduce fresh evidence under the modified rule in *Ladd v Marshall*. It is, moreover, not unheard of for a judge in chambers to recall witnesses on his own accord to testify before him in a Registrar's Appeal (see, *eg*, *Swiss Butchery Pte Ltd v Huber Ernst and others and another suit* [2013] SGHC 151 at [114]), in which case the modified rule in *Ladd v Marshall* may not apply. The judge is fully entitled to do so since the original jurisdiction is vested in him to begin with (see [16] above), although he should be mindful that the parties will already have examined the witnesses fully once below.

43 In conclusion, we hold that the standard of review of the Registrar's findings of fact on the oral evidence should be the same as that applied to a trial judge's factual findings on appeal to the Court of Appeal—so that these findings may be overturned only if they are plainly wrong or against the weight of the evidence. However, the judge in chambers is in as good a position as the Registrar to assess the veracity of the witness' evidence, if the Registrar's assessment of the witness' credibility was based on inferences drawn from: (a) the internal consistency in the contents of the witness' testimony; or (b) the external consistency between the contents of the witness' evidence and the

extrinsic evidence.

The Registrar's findings of fact on affidavit or documentary evidence

44 The foregoing analysis will have little application where the Registrar has made findings of fact based on the affidavit or documentary evidence, for in such a case the judge in chambers is placed in no less advantageous a position as the Registrar to evaluate such evidence. There is no reason why the Registrar's findings should hinder or fetter the judge's powers. As this court also stated in *The "Asia Star"* [2010] 2 SLR 1154, a judge in chambers is entitled to draw the appropriate inferences from the affidavit or documentary evidence, as well as the Registrar's notes of hearing (at [21]). Therefore, where the Registrar's findings of fact are based on affidavit or documentary evidence, we are convinced that a judge in chambers will be in just as good a position as the Registrar to make his own findings on the same.

The Registrar's findings of fact based partly on the oral evidence and partly on affidavit or documentary evidence

45 We touch lastly on mixed findings of fact, which are based partly on the oral evidence and partly on the affidavit or documentary evidence. In our view, the standard of review of mixed findings of fact should *not* be the same as that applicable to findings of fact based solely on the oral evidence (*ie*, where reversal is permissible only if the findings are plainly wrong or against the weight of the evidence), but a less strict standard. However, that does not mean that a judge in chambers should be free to disregard a mixed finding of fact by the Registrar, as is the position in respect of the Registrar's findings of fact based on affidavit or documentary evidence. Having regard to the practice of the courts, we think that an *intermediate* standard of review would more suitably reflect the hybrid nature of a mixed finding of fact, so that a judge in chambers is entitled to overturn such a finding by the Registrar only where there is sufficient evidence to show that, more likely than not, the finding was not warranted.

Conclusion

46 To summarise, in an appeal to a judge in chambers against the Registrar's decision on an assessment of damages:

(a) The judge's discretion is unfettered by the exercise of the Registrar's discretion below, although due weight should be given to the latter's decision.

(b) The Registrar's findings of fact based on the oral evidence may only be overturned by the judge if those findings are plainly wrong or against the weight of the evidence.

(c) If the Registrar's assessment of a witness' credibility was based on inferences drawn from:

(i) the internal consistency in the contents of the witness' testimony; or

(ii) the external consistency between the contents of the witness' evidence and the extrinsic evidence,

(a) then the judge is in as good a position as the Registrar to make the assessment.

(d) The judge may make his own findings of fact on the admitted documentary and affidavit evidence, and he is entitled to draw the appropriate inferences from this evidence and the

Registrar's notes of hearing.

(e) Where the Registrar's finding of fact is based partly on the oral evidence and partly on affidavit or documentary evidence, the judge may overturn that finding only where there is sufficient evidence to show that, more likely than not, the finding was not warranted on the evidence.

47 As a final remark, while these principles are intended to apply in an appeal to a judge in chambers from the Registrar's decision on an assessment of damages, we think that they are just as likely to be applicable where the appeal is against the Registrar's decision made in other proceedings which involve an examination of witnesses or the taking of oral evidence, such as the hearing of inquiries or the taking of accounts.