

Ng Ngah Len @ Datin Sandra Kuah v Kuah Tian Nam @ Dato Peter Kuah
[2003] SGHC 109

Case Number : Div P 1194/1998, RAS 720002/2002

Decision Date : 09 May 2003

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Peter Low (Peter Low Tang & Belinda Ang) for the Appellant; Belinda Ang (Peter Low Tang & Belinda Ang) for the Appellant

Parties : Ng Ngah Len @ Datin Sandra Kuah — Kuah Tian Nam @ Dato Peter Kuah

Family Law – Divorce – Division of matrimonial assets – Factors to be considered – Whether sufficient consideration given to wife's financial contribution – Women's Charter (Cap 353, 1997 Rev Ed) s 112(2).

Family Law – Divorce – Maintenance – Quantum – Period – Approach to be taken in determining multiplier.

1 This matter came before me as an appeal against orders made by the District Judge in relation to the ancillary matters that arose when the petitioner wife was granted a decree nisi of divorce against the respondent husband. Both parties had appealed against the orders made but, at the start of the hearing, I was informed by counsel for the husband that he had no instructions from the husband in relation to the wife's appeal or in relation to his own cross-appeal. Counsel then asked for leave to be excused from the hearing. I granted his request. Accordingly, only the wife's appeal went on and the husband did not appear and was not represented at the hearing.

2 The wife had appealed against the judge's orders in respect of the division of the matrimonial property and lump sum maintenance. The judge had ordered that the husband was to pay the wife lump sum maintenance of \$2 million and a further sum of \$15 million as the wife's share in the matrimonial assets. In the a notice of appeal filed by the wife she asked for the following relief:

(a) that the order relating to the lump sum maintenance be varied by increasing the said sum of \$2 million to such an amount as the High Court deemed just and equitable having regard to all the circumstances of the case; and

(b) that the order relating to the division of the matrimonial assets be varied by increasing the said sum of \$15 million to such an amount as the High Court deemed just and equitable having regard to all the circumstances of the case.

3 Having heard and considered the submissions of counsel for the wife, I allowed the appeal by:

(a) increasing the lump sum maintenance to \$3,888,000 on the basis of a monthly maintenance of \$20,250 over a period of 16 years; and

(b) increasing her share in the matrimonial assets to \$25 million.

Those were the sums that I deemed just and equitable having regard to all the circumstances of the case. The wife, however, is still dissatisfied.

Division of matrimonial assets

4 The judge's decision was challenged on two bases. First, she had found that the matrimonial assets were worth at least \$100 million. Counsel submitted that on the facts before the District Court, the judge should have found that the value of the matrimonial assets was at least \$120 million though on the wife's own calculation their value was in excess of \$129,132,239.63 and RM 5,073,000. Secondly, in awarding the wife 15% of the matrimonial assets, the judge had failed to give adequate consideration to various factors enumerated in s 112(2) of the Women's Charter (Cap 353) ('the Act').

5 In coming to her conclusion that the matrimonial assets were worth at least \$100 million, the judge took into account the following:

- (a) a document in the husband's handwriting referred to as '\$120 million page';
- (b) that the husband owned numerous properties in Malaysia and Singapore;
- (c) that he owned and controlled more than 20 companies in Singapore, Malaysia and Indonesia;
- (d) that his business empire was huge and involved in several multi-million dollar projects;
- (e) that during the marriage, the husband had been able to maintain his wife and three mistresses in luxury; and
- (f) that his personal and business standing were high enough for him to be closely associated with leading Malaysian personalities.

The judge had to rely on the aforesaid factors in coming to her conclusion as she did not have full details of the values of the matrimonial assets and was not satisfied with the disclosure that the husband had made. Although the wife had contended that the \$120 million page showed that the husband had assets of at least \$120 million, the judge rejected this inference as she considered that the figures in the document must have referred to some value or some of money but it was not clear whether they referred to amounts in Singapore currency or Malaysian currency or any other currency. She did not consider safe to conclude that the words '100 million', '10 million' and '10 million' in the \$120 million page referred to Singapore dollars 120 million.

6 The judge was very careful in her analysis of the evidence on the value of the matrimonial assets. I could find no fault with her reasoning. The wife's assertion that the matrimonial assets were worth much more than \$100 million was not backed up by evidence.

7 As regards the judge's assessment of the wife's contributions to the marriage and the acquisition of the matrimonial assets, it was submitted that she had failed to give sufficient regard to the extent of the wife's financial contributions in property towards the maintaining of the matrimonial assets as required by ss 112(2)(a), (b) and (g) of the Act.

8 The contributions which the wife relied on were as follows:

- (a) between 1986 and 1990 when the husband experienced business difficulties, the wife had:
 - (i) sold the Singapore apartment that was co-owned by them;

- (ii) re-mortgaged the family car;
- (iii) sold a lot of her personal jewellery; and
- (iv) mortgaged her 2-storey terrace house in Malaysia

in order to raise funds to help his business and for personal expenses

(b) the wife's house in Malaysia was mortgaged four times between 1980 and 1984 to raise funds for the husband's Malaysian company and the title deeds to the property were only returned to the wife in 1994;

(c) the wife had agreed to the mortgage of the family home (which she and the husband owned as tenants-in-common) at No. 14 Lady Hill Road and the overdraft granted by the bank on the basis of this security had been used for the husband's expenses, the husband's businesses and as working capital for the husband's company Messrs Sanpete Development (S) Pte Ltd; and

(d) the value of the wife's share in the Lady Hill property was considerably diminished after overdraft monies were used and lost in relation to the business of Sanpete Development (S) Pte Ltd.

9 The wife was a housewife throughout the 21 years that the marriage lasted. Although she was a director of Sanpete Development (S) Pte Ltd, there was no assertion or evidence that she had been more than a nominal director or that she had contributed to the business of this company. The husband's considerable financial empire was built up by his own efforts. The judge in deciding to award the wife 15% of the matrimonial assets took into consideration the length of the marriage; the wife's contribution in providing a home for him in Singapore; her contribution in supporting him when he was building up his business empire and remaining with him through his business failures; and also that the wife had not caused him problems until 1997 despite his many years of infidelity. She considered that the wife's claim to 40% of the matrimonial assets was excessive. I agreed with her on this. However, I also considered that the judge had not paid sufficient attention to the financial contribution made by the wife. Although such financial contribution was modest, it deserved recognition especially since it helped the husband during the period when his business was not doing well. Also, the wife had by granting mortgages over property which she owned solely or co-owned with the husband undertaken a personal liability which also had to be recognised as part of her contribution. It could not be forgotten, however, that the wife's assets had ultimately come from the husband's efforts as well. Weighing up all these factors I considered that the maximum share of the matrimonial assets that it would be equitable to award the wife would be 25% thereof. In these calculations, I also made allowance for the fact that the husband did not make complete disclosure of his assets and therefore about five per cent of the amount awarded to the wife was given to her as a share of the undisclosed assets.

Maintenance

10 In the court below the wife had asked for a lump sum maintenance of \$15.12 million based on the amount of \$60,000 a month for 21 years. The husband had contended that his financial circumstances had changed drastically since the marriage broke up in 1998 and the wife should only get \$600,000 based on \$5,000 a month for ten years. The judge did not believe the husband's allegation relating to his adverse financial circumstances in view of the way he had conducted his life since the divorce. At the same time, she did not accept the wife's claim of \$60,000 a month as it included the mortgage payment for the Lady Hill bungalow which had already been sold. It also

included amounts to cover the salaries of a driver and security guard which the judge considered unnecessary. The judge noted that previously interim monthly maintenance of \$12,000 had been awarded in addition to payments for the gardener and maids which the wife no longer had. The judge ordered \$2 million as lump sum maintenance based on \$12,000 a month for 14 years on the basis that the wife had a substantial sum from her share in the matrimonial assets which she could use to set up a new home. The judge considered the period of 14 years as a reasonable period bearing in mind the respective ages of the party (the wife was 46 years old and the husband 52 years old at the time of hearing) and the length of the marriage.

11 The appeal against the maintenance awarded was mounted on two fronts. First, it was contended that the period of 14 years was not long enough. Secondly, it was contended that the sum of \$12,000 a month was inadequate.

12 On the period, counsel cited the case of *Ong Cheng Leng v Tan Sau Poo* [1993] 3 SLR 137 for the proposition that the straight line calculation would be preferred ie taking a compromise between the average life expectancy of a Singapore woman (70 years) and the usual retirement age (65 years) of a Singapore male worker less the wife's present age. It was contended that the 14-year multiplier adopted by the judge showed that she expected the husband to retire at 67 years old. The husband, however, had had his fourth child at the age of 49 and one would not expect him to retire so soon. In fact he could not afford retire so soon. Accordingly, the multiplier of 14 years adopted by the judge was wrong. Further, the wife came from a family with a history of longevity, her grandmother died at 102 and her mother was still alive and healthy at 75. The wife was 46 at the time of hearing and had asked for a multiplier of 21 years on the basis of the *Tan Sau Poo* decision even though that would bring her age up to 67 and she could expect to live much longer than that. The District Judge, by taking a multiplier of 14 years, had capped the wife's life expectancy at 60.

13 I did not agree with counsel that the approach to the multiplier set out in *Tan Sau Poo* was a strict rule which had to be followed by all courts considering this question. In that case, Karthigesu J, delivering the judgment of the Court of Appeal, observed that the straight-line basis applied by the judge at first instance seemed proper 'in the circumstances of this case'. I understood this to mean that the approach to be adopted when assessing the multiplier for lump sum maintenance would primarily be guided by the circumstances of the case before the court. In this case, as in most cases, one had to take account of three facts: first, that if the parties had remained married, the death of the husband would have ended the wife's maintenance, secondly, there would have to be some allowance made for the fact that the wife would be obtaining her maintenance in a lump sum and up front, and thirdly, the amount of the wife's own assets. In view of those factors, I thought only a slight adjustment needed to be made to the multiplier. I substituted a period of 16 years because I thought that it was reasonable to take the retirement age of the husband in this case as 68. Being self-employed, he did not have any compulsory retirement age but since he was also well heeled, there would be no financial need for him to work till he dropped. As far as the wife was concerned, 16 years would take her up to her early 60s and even if she lived for a considerable period beyond that, she would be reasonably comfortable if she was a sensible steward of the lump sum maintenance.

14 On quantum, the wife put up a table of her monthly expenses which she said amounted to \$50,954.80 without taking account of the cost of accommodation. The wife's main argument was that she had lived well with a car, a driver, a gardener, two maids and a housekeeper. She had lived in a bungalow and had required the services of the driver due to poor eyesight. Since the separation, the wife had had to scrimp and save because the husband had deprived the wife of the use of his credit cards, had not given her maintenance and had refused to pay for the car and house. The wife did not see why her standard of living should be reduced when the husband was continuing to upkeep

his mistresses and children in a luxurious fashion.

15 I accepted that the wife was entitled to be maintained at a fairly high level since the husband could afford it. Even so, I considered that the wife's expenses were extremely high. The sum of \$50,954.80 was derived as follows:

	Amount
1. Husband's monthly allowance	
[\$5,000 to \$10,000] to wife	\$ 7,500.00
2. Wife's monthly credit card expenses	
(1) AMEX Corporate Card	
(i) Feb 1997 to Jun 1998	\$ 4,532.00
(2) AMEX Gold Card	\$ 9,000.80
(i) Feb 1997 to Dec 1997	\$6,103.44
(ii) Jan 1998 to Jun 1998	\$11,898.17
3. 2 foreign maids	\$ 1,305.00
4. Driver	\$ 2,600.00
5. Gardener	\$ 2,800.00
6. House Keeper	\$ 1,699.00
7. Food	\$ 2,500.00
8. Clothing	\$ 6,500.00
9. Medicine	\$ 1,300.00
10. Utilities	\$ 1,788.00
11. Household wares	\$ 400.00
12. Newspapers	\$ 50.00
13. Entertainment	\$ 3,580.00
14. Gifts	\$ 400.00
15. Foreign Travels	\$ 5,000.00

\$50,954.80

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The wife's list of expenses showed an extravagant, not merely luxurious, lifestyle. Items 1 and 2 alone came to \$21,032.80 and this expenditure apparently had nothing to do with her food, clothing, medical bills or her payments for utilities, entertainment, gifts and foreign travel. Whilst the sum of \$12,000 a month seemed low in comparison with the wife's lifestyle during the marriage, it appeared to me that she could not justify more than \$50,000 a month in maintenance. On a consideration of the evidence, my judgment was that \$20,250 a month would be more than sufficient to keep the wife well. I came to this sum on the following basis:

1.	1 Foreign maid	\$ 750.00
2.	1 driver	\$ 1,500.00
3.	Utilities	\$ 500.00
4.	Foreign travel	\$ 2,500.00
5.	Food, clothing, medicine, household expenses, entertainment and gifts	\$15,000.00

\$20,250.00

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