

Wong Lai Kum v Lim Khee Tee
[2012] SGHC 151

Case Number : Divorce Petition No 2899 of 1994
Decision Date : 25 July 2012
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : David Liew (LAWHUB LLC) for the husband; Grace Tan (Robert Wang & Woo LLP) (appointed by Legal Aid Bureau) for the wife.
Parties : Wong Lai Kum — Lim Khee Tee

Family law – Maintenance

25 July 2012

Tay Yong Kwang J:

1 In Summons No 600015 of 2012, Lim Khee Tee (the “husband”) applied to set aside an order of the High Court dated 31 July 1997 ordering him to pay maintenance of \$300.00 per month to his son, Linus. In Summons No 600037 of 2012, the husband applied to set aside an order of the Court of Appeal dated 28 July 1998 ordering him to pay maintenance of \$50.00 per month to his former wife, Wong Lai Kum (the “wife”). The husband sought to set aside both orders retroactively from 1 November 2005. In the latter summons, the husband also sought to suspend and/or set aside an order made by the Family Court on 26 January 2012 requiring him to pay Linus \$150.00 per month in maintenance with effect from 1 March 2012. After hearing the parties, I set aside the earlier two maintenance orders but made no order on the third (by the Family Court).

Background

2 The wife commenced divorce proceedings against the husband in 1994. A decree nisi was granted the following year. The parties have two children: Linus and his elder brother, Justus. The husband was a widower with two sons from his previous marriage, Daniel and Samuel.

3 On 31 July 1997, the High Court gave its decision on the ancillary issues between the parties. The wife was granted custody of Linus while the husband was granted custody of Justus and was ordered to pay \$300.00 per month in maintenance for Linus. No order for the wife’s maintenance was made. The wife appealed and the Court of Appeal varied the High Court’s order by ordering the husband to pay the wife \$50.00 per month in maintenance.

4 The wife asserts that the applicant did not pay maintenance regularly and would only do so when she went to the Family Court to enforce the maintenance orders. In any event, the husband stopped paying maintenance from November 2005, around the time he lost his job.

5 In December 2011, the husband was notified by the Family Court that Linus had made an application in MSS 6224 of 2011 regarding the maintenance in arrears as well as the matter of a fresh maintenance order. On 26 January 2012, the husband and Linus attended a mediation session and it was agreed that the husband would pay \$150.00 per month in maintenance for Linus from 1 March 2012. The husband alleges that this was on the condition that Linus forgo his claims to arrears and

speak to his mother regarding the withdrawal of MSS 6223 of 2011, a separate application taken out by the wife. This condition was not mentioned in the maintenance order ("the 2012 order") granted that day. [\[note: 1\]](#)

6 This was a rather unusual order in that it appeared to be a fresh maintenance order under s 69 of the Women's Charter (Cap 353, 2009 Rev Ed) rather than a variation pursuant to s 118 of the same statute which provides the court with the power to rescind or vary orders for maintenance which are consequent on matrimonial proceedings. Indeed, it could not have been a variation of the earlier order of court as s 71(3) provides that a District Court shall have no power to vary an order of the High Court. If the 2012 order was a new and additional order, the effect would be that the husband had to pay a further \$150.00 in addition to the \$300.00 he was already obligated to pay Linus.

7 However, both the husband and the wife approach this matter on the understanding that the 2012 order was actually a variation order in respect of Linus' maintenance. In his affidavit filed on 13 February 2012, the husband stated that he "agreed to continue to provide Linus a lower maintenance of \$150.00 per month with effect from 1 March 2012". [\[note: 2\]](#) The wife has the same understanding, stating in her affidavit dated 7 May 2012 that "On 26 January 2012, by consent, in MSS 6224 of 2011, Linus Lim agreed to a variation of maintenance for himself from S\$300 per month to S\$150 per month, with effect from 1 March 2012." [\[note: 3\]](#)

8 In any event, the husband applied to this court to set aside all the maintenance orders. The wife's enforcement proceedings in the Family Court were stayed pending the outcome of the applications here. The husband explains that he did not apply to court earlier as he was advised to let things be since the wife and Linus had not taken out any enforcement proceedings then. However, with the revived interest in the maintenance orders shown by them, he had no choice but to apply to set aside those orders.

The applicable considerations

9 Section 118 of the Women's Charter states the applicable considerations for varying or rescinding an order for maintenance:

Power of court to vary orders for maintenance

118. The court may at any time vary or rescind any subsisting order for maintenance, whether secured or unsecured, on the application of the person in whose favour or of the person against whom the order was made, or, in respect of secured maintenance, of the legal personal representatives of the latter, where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances.

In the present case, it is the husband's change in circumstances that is relevant.

The husband's case

10 The change in circumstances on which the husband relies is his loss of employment in 2005. At the time the ancillary issues were decided by the High Court in 1997, the husband was employed as a fulltime lecturer with a private school earning around \$2,000 to \$3,000 per month. He was made a bankrupt by his creditors in 1994 and remained an undischarged bankrupt at the time ancillary issues were decided. The parties' matrimonial home was ordered to be sold by public auction with the net sale proceeds (after the discharge of encumbrances, payment of expenses relating to the sale and

refund of CPF monies) divided equally between the parties. The husband claims that his share of the sale proceeds was used to discharge his bankruptcy in 2000. There was no other mention of matrimonial assets in the order of court.

11 A letter dated 8 December 2005 terminating the husband's employment with the Nanyang Institute of Management with one month's salary in lieu of notice was produced. [\[note: 4\]](#) He asserts that he was not able to find alternative employment and therefore lost his source of income. It bears mentioning that the applicant was 71 years old at that time and is now 78.

12 The husband produced a number of documents issued by the Inland Revenue Authority of Singapore ("IRAS") to support his assertion. A notice of assessment for year of assessment 2006 (that is, income obtained from 1 January 2005 to 31 December 2005), showed a total income of \$48,730.00. [\[note: 5\]](#) The bulk of this, \$48,629.00, was from employment, with dividends accounting for the remaining \$101.00. The notices of assessment for the next two years showed incomes of \$78.00 and \$34.00 respectively, these being entirely from dividends. [\[note: 6\]](#) On 31 January 2009, the husband received a notice from the IRAS notifying him that he no longer had to file income tax returns as his income had fallen below the gazetted income threshold for filing a return. Thus, there is little doubt that the husband's income in 2006 and 2007 was negligible and it is probable that this situation persisted thereafter.

13 The husband provided evidence to show that he possesses little in the way of savings. I note in passing that such evidence does not demonstrate a change in circumstances in the present case. Rather, it establishes the materiality of the husband's loss of employment to his circumstances. If the husband had significant savings or assets at the time, losing his income might not amount to the requisite change in circumstances under s 118. However, if he was instead in a penurious state, the significance of such a change would be heightened.

14 The passbook of the husband's POSB account shows that between 20 April 2007 and 22 January 2012, the balance in this account was largely below \$2,000. [\[note: 7\]](#) Less than \$10,000 was credited into the account during this time, the majority *via* 17 recurrent deposits of \$297.00 from the applicant's Central Provident Fund ("CPF") Retirement Account which ceased on 3 September 2008. [\[note: 8\]](#) The remainder was deposited via a number of sporadic cash or cheque deposits or transfers into the account. This is with the notable exception of two amounts of \$20,000.00 and \$7,391.47 deposited on 14 May 2009 and 28 May 2009 respectively, which the husband states were his inheritance from his late mother. These were rapidly withdrawn and by 6 June 2009 the account balance was once again below \$2,000. The husband explained that the money was used to repay relatives and friends who had lent him money for Justus' education and living expenses. As at 22 January 2012, the balance stood at \$106.33.

15 The husband does not have significant CPF funds. His Retirement Account was depleted by the deposits referred to in the previous paragraph. He had \$402.68 in his Ordinary Account as at January 2006 but this was depleted by the end of the year. \$2,564.58 credited into the account in 2007 from the Special Discounted Shares Scheme was withdrawn shortly thereafter. The husband's Special Account has at all times been empty. The only significant sum is in his Medisave Account which has been fairly constant at around \$18,000.

16 The husband does not own any residential property. He did not use his share of the sale proceeds of the matrimonial home to buy a new property as the money was used to pay his debts. Immediately after the divorce, the husband and Justus stayed with the husband's eldest son, Daniel, in the latter's Housing Development Board ("HDB") flat in Teban Gardens. Daniel later emigrated and

the flat was sold in 2009. The husband and Justus lived in a rented room in a HDB flat in Bukit Merah View for the next three years. On 9 February 2012, the HDB offered the husband rental of a 2-room flat at a rent of \$165 per month. [\[note: 9\]](#) It appears from his affidavit dated 11 May 2012 that he has accepted that offer and is now staying in such a flat with Justus.

17 The husband states that he has been dependent on Daniel and Samuel for both his and Justus' living expenses. He also had to borrow from friends and relatives to support Justus who is currently pursuing tertiary education at SIM University. Both Samuel and Justus have affirmed affidavits in support of their father's assertions. They state that the husband has not deliberately neglected or refused to pay maintenance since 2005 but rather did not have the means to do so. Samuel has been providing for the living expenses of the husband and Justus since the husband lost his job. He has paid the maintenance ordered in enforcement proceedings before the Family Court on the husband's behalf and is also paying the costs of the present applications.

18 In short, the husband's case is that he has not had significant assets prior to the divorce and has since December 2005 been without a source of income.

The wife's case

19 The wife, who was represented by counsel appointed by the Legal Aid Bureau, alleges that the husband is unwilling, rather than unable, to pay the maintenance due to her and to Linus. She argues that the husband should have applied for a variation of the maintenance orders when he lost his job in 2005. He is only doing so now because he is faced with the claims for the arrears.

20 She denies the husband's assertion that he has no assets or savings. The husband is said to have orchestrated his bankruptcy by ignoring insignificant debts in order to obtain an advantageous position in the divorce proceedings. These were then paid off with the sale proceeds of the matrimonial home immediately after the conclusion of the divorce proceedings. The husband was also the managing director in his own businesses. In addition, the wife claims to have seen cheque books for various local and overseas bank accounts while the parties were still married. She believes that he continues to own overseas assets and income sources.

21 The wife states that she is currently working as a part-time tuition teacher with a variable income of \$800 to \$1,000 per month. She claims to be suffering from depression and back problems and that she does not have the means to consult a doctor over these conditions. She asserts that her financial difficulties are a result of the husband's refusal to pay maintenance.

22 The wife also points out that she has not applied for an upward variation of Linus' maintenance even though the initial order was made when Linus was only 7 years old and his expenses have increased since. Linus is currently a first year student at the National University of Singapore. His school fees are \$6,546 per annum but a study loan covers this amount and only needs to be serviced after Linus' graduation. The wife gives Linus an allowance of \$500 per month.

My Decision

23 In my view, the husband has shown sufficient evidence to demonstrate a material adverse change in his financial circumstances as at November 2005. There is no reason to doubt that he has been unemployed since the time he stopped working in the Nanyang Institute of Management. There is also no reason to doubt that he has been unable to secure new employment, given his advanced age.

24 The wife's allegation that the husband possesses hidden assets and sources of income are bare assertions that have not been supported by any evidence. Indeed, the circumstances suggest that it is unlikely that these assertions are true. The parties did not have any matrimonial assets aside from their matrimonial home. The High Court, in deciding the ancillary issues, did not appear to have made any negative inference against the husband over any failure to disclose all his assets and means. This suggests that this issue was not raised at the time or, if raised, found to be unsubstantiated. A BizNet search with the Accounting and Corporate Regulatory Authority conducted by the wife shows that the companies which the husband was involved in have either been wound up or struck off. If the husband has hidden assets and income, these must have been obtained in the period since the divorce. However, there is nothing to suggest that the husband had the opportunity to do so. Perhaps most telling is the fact that the husband is living with his son in a rented 2-room flat at a monthly rent of \$165. It is highly unlikely in the circumstances here that the husband would go to such lengths with his son in order to avoid paying maintenance totalling \$350 per month.

25 In these circumstances, the husband's loss of employment certainly amounts to the requisite material change in circumstances under s 118. *Halsbury's Laws of Singapore* Volume 11 (LexisNexis, 2006 Reissue, 2006) at paragraph [130.700] states:

A maintenance order may also be rescinded where either the payor proves that he is no longer able to pay any sum(s) of money or that the beneficiary is no longer in any financial need.

In showing that he did not have savings, assets or income since the end of 2005, the husband has demonstrated to my satisfaction that he has not been able to pay maintenance since that time even though the wife and Linus still require his financial contributions. I accordingly ordered that the maintenance orders requiring him to pay Linus and the wife \$300.00 and \$50.00 per month respectively be set aside with effect from 1 November 2005. Considering that Linus is already in university and given the husband's age with practically no prospects of finding new employment, a rescission of the said maintenance orders made by the High Court and the Court of Appeal respectively was more appropriate than a suspension or a reduction of the maintenance amounts due.

26 However, I made no order in respect of the 2012 order which was made by consent on 26 January 2012. Section 72 of the Women's Charter states:

Rescission and variation of order

72.—(1) On the application of any person receiving or ordered to pay a monthly allowance under this Part and on proof of a change in the circumstances of that person, his wife or child, or for other good cause being shown to the satisfaction of the court, the court *by which the order was made* may rescind the order or may vary it as it thinks fit.

(emphasis added)

Thus, the application to set aside the 2012 order should have been brought before the Family Court. Accordingly, the 2012 order of the Family Court is to stand until the Family Court orders otherwise.

27 The wife has appealed to the Court of Appeal against my decision. Subsequent to the filing of her appeal by counsel appointed by the Legal Aid Bureau, legal aid for the wife was withdrawn.

[\[note: 1\]](#) Lim Khee Tee @ Lim Khek Tee's Affidavit dated 13 February 2012 at page 42.

[\[note: 2\]](#) *Ibid*, at paragraph 34.

[\[note: 3\]](#) Wong Lai Kum's Affidavit dated 7 May 2012, at paragraph 25.

[\[note: 4\]](#) Lim Khee Tee @ Lim Khek Tee's Affidavit dated 13 February 2012 at page 21.

[\[note: 5\]](#) Lim Khee Tee @ Lim Khek Tee's Affidavit dated 13 February 2012 at page 33.

[\[note: 6\]](#) Lim Khee Tee @ Lim Khek Tee's Affidavit dated 13 February 2012 at pages 34 and 35.

[\[note: 7\]](#) Lim Khee Tee @ Lim Khek Tee's Affidavit dated 13 February 2012 at pages 22 to 26.

[\[note: 8\]](#) Lim Khee Tee @ Lim Khek Tee's Affidavit dated 13 February 2012 at pages 27 to 32.

[\[note: 9\]](#) Lim Khee Tee @ Lim Khek Tee's Affidavit dated 13 February 2012 at pages 37 to 38.

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